S. HRG. 98-1282

JURISDICTION ON INDIAN RESERVATIONS

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 3092

TO ESTABLISH A SPECIAL MAGISTRATE WITH JURISDICTION OVER FEDERAL OFFENSES WITHIN INDIAN COUNTRY AND TO AUTHORIZE TRIBAL AND LOCAL POLICE OFFICERS TO ENFORCE FEDERAL LAWS WITHIN THEIR RESPECTIVE JURISDICTIONS, AND FOR OTHER PURPOSES

JANUARY 3, 1985

GREAT FALLS, MT

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JURISDICTION ON INDIAN RESERVATIONS

JANUARY 3, 1985

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Great Falls, MT.

The committee met, pursuant to notice, at 10:05 a.m., in the city commission chambers, Civic Center Building, Great Falls, MT, Senator John Melcher (acting chairman) presiding.

Present: Senator Melcher.

Staff present: Max Richtman, minority staff director.

Senator MELCHER. Good morning. I am sorry to be a little bit late. I had a few odds and ends that had to be cleared up.

We have what I hope is a good witness list. Before we call the first witness, I have a statement to make that is appropriate for where we are at this point in time.

This country has had a history of a couple hundred years of Indian treaties and acts of Congress, but there still are yet to be found ways of closing the blank spots in the U.S. law concerning respect of authorities and jurisdictions of the Federal, State Governments and Indian tribes and Indian reservations.

Through my own experience of years ago I knew what the situation was on the Pine Ridge Reservation in South Dakota regarding law enforcement. That was during the late 1930's and early 1940's, and at that time, through the cooperative efforts of the Bureau of Indian Affairs and the Oglala Sioux Tribe, there seemed to be no conflicts of either State or Federal jurisdiction. But times have changed, and that situation has changed, and apparently conflicts are there now, as they are on most reservations.

There just does not seem to be any clear Federal jurisdiction over what is to be done on the Indian reservation, except with the major crimes, and that is through the FBI and the Federal courts. Only a few States have been granted authority by Congress for criminal jurisdiction on reservations, and that was under Public Law 83-280. Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin were given that authority by Congress.

Now, apparently under Public Law 280, other States, which were called optional States, do have the authority to assert jurisdiction upon certain conditions.

Tribal jurisdiction on a reservation through a tribe's constitution and counsel is limited. The *Oliphant* decision in the State of Washington a few years ago ruled that the tribal policy officers are not allowed to arrest non-Indians on a reservation. So there is no clear method or process at the present time to enforce even the most basic law and order procedures on reservations, unless there

are cooperative agreements between tribal, county, State, and Federal officials that are unchallenged or that go unchallenged in court.

That seems to be sort of a good faith means of maintaining the peace and assuring justice in a no man's land that can break down on almost any given day when someone or some group challenges the legality of whatever seems to be the system of cooperative law and order enforcement.

Although there are many problems that are confronting the relationship between the Indian tribes and non-Indians, either on the reservation or adjacent to the reservation, and the relationship with counties and State, we have to start somewhere in meeting the challenge posed by these unsolved questions of rights. Maintaining law and order is basic, and so the bill that we are going to hold hearings on today seeks to find a solution.

This bill was first introduced in June 1980, and hearings were held on the bill in Billings in August 1980. Additionally, the Select Committee on Indian Affairs held a 3-day hearing in March 1980 on Indian jurisdiction issues, and testimony was taken on the concept of an Indian magistrate system. The Senate took no action on the bill during the 96th Congress, and now I have reintroduced the bill in this Congress so that we could have hearings on it and determine whether there is a consensus that this approach is a constructive step toward solving many of the problems that arise on Indian reservations.

The bill deals primarily with broadening the powers of the Federal court system by establishing special Federal magistrates on Indian reservations, with clear jurisdiction to utilize county, State, Federal, and tribal law enforcement officers in warrants, summonses, arrests, and trial procedures on Indian reservations.

While it should be obvious to all of us that something of this nature is necessary for ordinary law and order procedures, it may also be necessary on tort and other civil matters to provide the rapid solution of jurisdiction on those types of disputes on reservations. The recent dispute arising from the injury of a youngster on the playground of the Lodge Grass School on the Crow Reservation is now before the U.S. Supreme Court to determine proper jurisdiction. I am not in any way attempting to interfere or prejudge that Court decision, but I believe whatever the Supreme Court will find in that matter will not resolve the basic issues of jurisdiction between tribal courts and Federal and State courts unless Congress acts to establish, by statute, what the proper procedures are.

The process through the special Federal magistrates on an Indian reservation to funnel into Federal district courts is one method and may be acceptable as a correct method, and that is a point of these hearings.

Since this bill is not new, but has been looked at over the past several years, I hope that through this hearing process we may arrive at a consensus. Obviously, there may have to be changes, modifications, additions, or substitutions, but I hope that the result will be something that is acceptable to Congress and to the people involved on or near reservations. If so, the Congress will be interested and will act on it.

It will be necessary for people in Western States, as well as Indian tribes, to back a bill rather vigorously, or no matter what we do or say here today and in subsequent hearings elsewhere, this bill will simply die, or any bill that we agree on will simply languish, due to the lack of attention by Congress and the administration. Neither this administration nor preceding administrations have actively sought solutions to the jurisdiction of problems on Indian reservations. If we want solutions to be enacted by Congress, we not only have to join together in backing specific legislation, but we also have to be very forceful and insistent with the administration itself so that they will endorse any bill that we propose.

Specific endorsements of the magistrate system on Indian reservations have been made by the Oglala Sioux tribe, the Navajo tribe, and the Montana Intertribal Policy Board, and we have those documents here substantiating that. I will make them a part of the record at the conclusion of our hearing today.

This hearing record will be left open for 3 weeks after today for any individual or any organization that might want to submit a written statement. That also applies to any of you folks, if you do not have a statement prepared today or you do have a statement prepared today and you still want to add to it after the hearing is over, you will have 3 weeks to do so.

Before we proceed with our witnesses, I will place a copy of S. 3092 in the hearing record. Also, I think we should put our section-by-section analysis of the bill in the hearing record. At least that shows what we think the language means.

[The bill and analysis follow. Testimony begins on p. 16.]

98TH CONGRESS
2D SESSION

S. 3092

To establish a special magistrate with jurisdiction over Federal offenses within Indian country and to authorize tribal and local police officers to enforce Federal laws within their respective jurisdictions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 11 (legislative day, SEPTEMBER 24), 1984

Mr. MELCHER introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To establish a special magistrate with jurisdiction over Federal offenses within Indian country and to authorize tribal and local police officers to enforce Federal laws within their respective jurisdictions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Reservation Special Magistrate and Law Enforcement Act of 1984".

SEC. 2. (a) Part III of title 28 of the United States Code is amended by adding immediately after chapter 43 the following new chapter:

"CHAPTER 44—INDIAN RESERVATION SPECIAL MAGISTRATES

"Sec.
"651. Appointment and tenure.
"652. Jurisdiction and powers.
"653. Remand of custody.
"654. Practice and procedure.
"655. Contempt.
"656. Training.
"657. Authorization of appropriations.

"§ 651. Appointment and tenure

"(a) The President, by and with the advice and consent of the Senate, shall appoint special magistrates as may be necessary to serve each Indian reservation and such additional areas as are within the Indian country as defined in section 1151 of title 18 and over which the United States exercises criminal jurisdiction under the provisions of chapter 53 of title 18.

"(b) No person may be appointed or reappointed to serve as a special magistrate under this chapter unless such person is and has been for at least five years a member in good standing of the bar of the highest court of the State (or one of the States) in which he or she is to serve.

"(c) In any case in which the President finds that a United States magistrate who meets the qualification of this Act is already reasonably available, the President shall give preferential consideration to such sitting magistrate for appointment as special magistrate under this section.

"(d) The appointment of any individual as a special magistrate shall be for a term of eight years and his or her reappointment shall be subject to the requirements of subsection (a) with respect to the advice and consent of the Senate.

"(e) Upon appointment and confirmation, the special magistrate shall reside within the exterior boundaries of the reservation to be served or at some place reasonably adjacent thereto.

"(f)(1) Except as provided in paragraph (2), persons appointed as special magistrates under this chapter shall be appointed as full-time magistrates and shall receive compensation at the rates fixed for full-time magistrates unde section 634.

"(2) Whenever, in the discretion of the President, it is determined that the position to which the special magistrate is being appointed will not have a sufficient caseload to warrant appointment as a full-time magistrate, then such special magistrate shall be appointed as a part-time magistrate and shall receive compensation at the rates fixed for part-time magistrates under section 634, the level of compensation to be determined by the President.

"(g) Except as otherwise provided in this chapter, the provisions of subsections (c), (g), (h), (i), and (k) of section 631, relating to limitations on employment, oaths of office, recordation of appointment, removal from office, and leaves

of absence shall apply to special magistrates appointed under this chapter.

"(h) Expenses of special magistrates shall be paid in the same manner as provided in section 635 for payment of expenses for magistrates.

"(i) The provisions of section 632 describing the character of service to be performed by full-time and part-time magistrates shall apply to any person appointed as a special magistrate under this section.

"§ 652. Jurisdiction and powers

"(a) Each special magistrate serving under this chapter shall have, within the territorial jurisdiction prescribed by his appointment—

"(1) all powers and duties conferred or imposed upon United States Commissioners by law or by the Rules of Criminal Procedure for the United States District Court;

"(2) the power to administer oaths and affirmations, impose conditions of release under section 3146, of title 18, and take acknowledgments, affidavits, and depositions, and

"(3) the power to conduct trials under section 3401 of title 18, in conformity with and subject to the limitations of that section except that the special designation provided for in subsection 3401(a) of title 18,

shall not be required, and the provisions of section 3401(b) of title 18, extending to a defendant the right to refuse trial before a magistrate and elect to be tried before a judge of the district court for the district in which the offense was committed, shall not be applicable to trials before the special magistrate.

"(b) Each such magistrate so serving under this chapter shall have any other duty or power which may be exercised by a United States magistrate in a civil or criminal case (including any tort action), to the extent authorized by the court for the district in which he serves.

"§ 653. Remand of custody

"If the special magistrate determines there is no Federal jurisdiction over an offense brought within his court, he may direct that custody of the defendant be remanded to the appropriate law enforcement officials.

"§ 654. Practice and procedure

"(a) Except as otherwise provided in this section, the practice and procedure for the trial of cases before magistrates serving under this chapter, and the taking and hearing of appeals to the district courts, shall conform to that set forth in section 3401 of title 18, and in rules promulgated by the Supreme Court pursuant to section 3402 of title 18, and section 636(c) of this title.

"(b) Any defendant appearing before a special magistrate may be assisted by a lay spokesman of his or her choice, and assistance by such spokesman, whether paid or voluntary, shall not be considered the practice of law. Assistance by such counsel shall not waive the right of the defendant to appointed counsel in any case in which he or she is entitled to such appointed counsel.

"(c)(1) In any case in which the defendant requests a trial by jury before the special magistrate, only persons who actually reside within the reservation in which the offense is alleged to have been committed shall be eligible to serve on the jury panel.

"(2) The special magistrate, in consultation with tribal authorities and county and municipal officials, shall develop and maintain for purposes of jury selection a list of persons residing within the reservation over which the special magistrate has jurisdiction. Such list shall be developed or compiled from lists of persons eligible or registered to vote in State, county, municipal, or tribal elections. In developing such list, the special magistrate shall take care that such list fairly elects a cross section of the population within the reservation.

"(3) In any case in which the defendant requests a trial by jury before the special magistrate, such jury shall be com-

posed of six persons whose names appear on the jury selection list prepared by the special magistrate.

"(4) Except as provided in this section, the rules of the district court pertaining to the selection of jurors and juror eligibility for trial before magistrates shall be applicable.

"(d) Tribal police officers, Bureau of Indian Affairs police officers, and Federal, State, and local law enforcement officers, acting within the geographic areas in which they have jurisdiction under the laws of their respective governments, are authorized to execute any warrant for arrest, or warrant for search and seizure, or any other summons, subpoena, or order which the special magistrate is authorized to issue in criminal cases arising within the Indian country, or under the general rules of Federal Criminal Procedure or the Federal Rules of Procedure for the Trial of Minor Offenses before the United States Magistrates.

"(e) The provisions of the Court Interpreters Act of 1978 (Public Law 95–539; 92 Stat. 2040) shall apply to trials before the special magistrate.

"§ 655. Contempt

"(a) In a proceeding before a special magistrate, any of the acts or conduct described in section 636(e) as constituting a contempt of the district court when committed before a magistrate shall constitute a contempt of court when committed before a special magistrate, and the procedures provided

in section 636(e) for prosecution of such contempt shall govern prosecutions for contemptuous conduct when committed before a special magistrate.

"(b) All property furnished to any special magistrate shall remain the property of the United States and, upon the termination of his or her term of office, shall be transmitted to the successor in office or otherwise disposed of as the Director orders.

"(c) The Director shall furnish to each United States special magistrate appointed under this chapter an official impression seal in a form prescribed by the conference. Each such officer shall affix his seal to every jurat or certificate of his official acts without fee.

"§ 656. Training

"The periodic training programs and seminars conducted by the Federal Judicial Center for full-time and part-time magistrates as provided in section 637, shall also be made available to special magistrates appointed under this chapter. This shall include the introductory training program offered new magistrates which must be held within one year after their initial appointment. The cost of attending such programs shall be borne by the United States.

"§ 657. **Authorization of appropriations**

"Beginning October 1, 1985, there is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this chapter.".

(b) The table of chapters for part III of title 28 of the United Stated Code is amended by inserting after the item for chapter 43 the following:

"44. Indian Reservation Special Magistrates ..... 651.".

○

SECTION-BY-SECTION ANALYSIS OF S. 3092

"The Indian Reservation Special Magistrate Act"

Section 1: Title: "Indian Reservation Special Magistrate and Law Enforcement Act of 1984".

Section 2: Amends 28 U.S.C. by adding after chapter 43 a new chapter: "Chapter 44 - Indian Reservation Special Magistrates". The proposed Chapter 44 is set forth as follows:

"Section 651: Appointment and tenure

(a) provides for Presidential appointment, with advice of Senate, of magistrates to serve each reservation where the U.S. exercises criminal jurisdiction.

(b) requires that magistrates be a member of a state bar in good standing for at least five years.

(c) gives hiring preference to qualified U.S. magistrates who are reasonably available.

(d) sets appointment for 8 years with reappointment subject to subsection (a).

(e) requires that magistrates reside on or adjacent to reservation.

(f) (1) provides that magistrates shall serve full-time with compensation fixed pursuant to 28 U.S.C. 634.
(2) allows for appointment of part-time magistrate, when caseload warrants, under compensation fixed for part-time magistrates under 28 U.S.C. 634.

(g) provides that certain sections of 28 U.S.C. 631 relating to terms of employment shall apply to special magistrates.

(h) provides that expenses of magistrates shall be governed by 28 U.S.C. 635.

(i) provides that 28 U.S.C. 632 relating to the character of service shall apply to special magistrates.

"Section 652: Jurisdiction and powers

(a) provides that each magistrate shall have --

(1) powers conferred on U.S. Commissioners by law or by U.S. Rules of Criminal Procedure;

(2) power to administer oaths, impose conditions of release and take affidavits and depositions;

(3) power to conduct trials under limits of 18 U.S.C. 3401 but limits right of defendant to refuse trials before a magistrate and to elect trial before federal district court.

(b) gives magistrate any other duty or power that may be exercised by any U.S. magistrate in the district courts in which he or she serves, including any tort action.

"Section 653: Remand of custody

Provides that magistrate may transfer custody of defendant if there is no federal jurisdiction.

"Section 654: Practice and procedure

(a) requires that all practices and procedures shall conform to 18 U.S.C. 3401, 18 U.S.C. 3402, and 636(c) of this title.

(b) allows defendant to choose lay person to act as spokesman and any assistance by such spokesman shall not be considered the practice of law; such assistance shall not waive right of defendant to any appointed counsel to which he or she may be entitled.

(c)(1) provides that jury trials before a magistrate shall be composed only of residents of the reservation.

(2) requires that the magistrate and tribal and county officials shall develop and maintain jury lists developed from list of persons eligible to vote in local, state or tribal elections.

(3) requires that jury, if requested, shall be composed of six persons whose name appear on the list.

(4) provides that rules of the district court shall apply to jury selection and eligibility.

(d) authorizes tribal, BIA, Federal, State and local law officers to execute warrants for arrest or search and seizure or any other order issued in a criminal case.

(e) provides that the Court Interpreters Act of 1978 applies to trials before a magistrate.

"Section 655: Contempt

(a) provides that contempt provisions in 28 U.S.C. 636(e) apply to proceedings before a magistrate under this Act.

(b) provides that any property furnished to a magistrate shall be U.S. property and shall transfer at the end of each magistrate's term to his successor.

(c) requires that a seal be furnished to a magistrate and that he affix such seal to every jurat or certificate of his official acts without fee.

"Section 656: Training

Requires that periodic training programs be provided special magistrates under 28 U.S.C. 637 and that an introductory training program be given within one year of appointment, with costs borne by the U.S.

"Section 657: Authorization of Appropriation

(a) authorizes such sums as may be necessary.

(b) amends table of chapters for 28 U.S.C. part III by inserting after the item for chapter 43 the following: "44. Indian Reservation Special Magistrates.....651"."

Senator MELCHER. Now, it must be going to snow. I am informed that people in Wolf Point will leave early, McCann and Halverson. We will accommodate these witnesses if they need to, and for that matter, anyone else. We will try to get you up soon if you need to leave early.

Our first witness then will be James A. McCann, county attorney, Roosevelt County, from Wolf Point MT. You may sit if you like, Jim.

Mr. MCCANN. I think I will be more comfortable standing. If not, I will sit down.

First, I would like to thank the Senator for allowing us to speak at all, and especially to speak early. The reason is I have an emergency in the family; my wife is in the hospital, and I do not know what is going on yet.

Senator MELCHER. OK, I hope she is all right.

STATEMENT OF JAMES A. McCANN, COUNTY ATTORNEY, ROOSEVELT COUNTY, WOLF POINT, MT

Mr. MCCANN. Thank you. I have been county attorney, as you pointed out, of Roosevelt County for—in the office—for over 20 years. Also, in a part of that time, I spent 5 years as the U.S. magistrate serving the Fort Peck Reservation at Wolf Point. It has been my concern all of these years to bridge the gap, if you will, of the offenses that go unprosecuted, either in the tribal court or in the State district court or the Federal court. Unprosecuted partly because of the reasons of jurisdiction and partly because the burden of cases is such that the Federal court just could not handle all of the misdemeanor and minor offenses that would be and probably should be brought before it.

Since early 1974, I have been in correspondence with your office and also with Senator Metcalf's office to encourage the adoption of a bill that would grant broader jurisdiction to the U.S. magistrate to accept complaints on a local level without going through the U.S. attorney's office in Billings or Great Falls or Butte, and without the necessity of having the matter be referred to and investigated by the Federal Bureau of Investigation before the matter was presented.

Specifically, I am speaking of the types of cases that have come across my desk as county attorney first; cases where I had a terrible time in justifying my actions. The law precluded me from doing anything but what I did. These were in the area of misdemeanor assaults, primarily misdemeanor assaults committed by non-Indians against Indian persons. It has always been the understanding of myself and various defense counsel who have appeared in cases where I did attempt to present cases to the court based on facts, where the victim would be an Indian and the defendant would be a non-Indian, that we lacked jurisdiction. They were dismissed at the local level, and they were never appealed.

However, in 1983, an appeal was brought up off the Crow Reservation, based on those types of facts, that went to the Montana supreme court. The Montana supreme court said that the State did indeed not have jurisdiction over those types of offenses. The court said all of the offenses that were committed by or against Indian

persons within the exterior boundaries of the reservation are under the exclusive jurisdiction of the Federal court.

The cases that I have had to reject or to deny prosecution on were sometimes serious, in that maybe the injuries were not so serious, but that the social structures that were damaged by the actions of whatever individual might have caused the assault, were serious. Whether it would be in a school setting or whether it be in a social setting or even business setting in the streets, social fabric is damaged. For that reason, I felt it incumbent upon the Federal courts to have a forum in which these cases could be brought.

Repeat offenders: I had two situations in the county where there were repeat offenders who committed three or more assaults, minor misdemeanor assaults against Indian persons. After the third offense, I was successful in prevailing upon the U.S. attorney to do something about it. One-time offenders, nothing was ever done.

The tribal courts, by, I think, statute and definitely by court decisions, do not have jurisdiction over the non-Indian offender. The State court does not have jurisdiction over the subject matter, being the Indian victim. So here we were without the forum.

Now, I think that Senate bill 3092 beautifully addresses the problem. I wholeheartedly support the bill. I think that all of the problems that we have had can be—and probably, if the bill should pass even on an experimental basis on one or two reservations, that would try it out—would show that the bill does have merit. It is very beneficial legislation to the people who live on the reservations.

There are other matters that I am sure that various Indian witnesses will discuss in the area. The only other concern that I have on the bill, and it may not be anything to be worried about at this stage, is the matter of who would attend the prosecution of the case. The bill properly authorizes local law enforcement officers to directly present a case to the magistrate. However, there is going to have to be some machinery set up whereby either a special deputy U.S. attorney will be on hand to prosecute those cases, or to have a resident attorney that would be designated to do that, such as the various designees in other agencies are.

I think that from my experience as prosecutor, the need for an attorney on hand at all times probably is not going to be terribly great once some format is drawn for the presentation of the complaint and the language to be used. I do not think it is the proper function for the magistrate himself to take the complaint; however, as magistrate, I did not do that a time or two. There was no U.S. attorney available. I would try to step aside and take one of the other attorneys in my office to sort of serve as the prosecutor and, with my secretary's assistance, draw up the complaint. That is not a good situation, because that puts the judge in a position of having the information available to him first hand, beyond the basics of trying to establish mere probable cause for filing the charge.

I do not think that the function of the judge, whether he be magistrate or district judge or even tribal judge, should be such that he would have all of the information that would go toward the establishment of proof beyond a reasonable doubt at the initial stage of the process. In that view also, after the document is drawn and it is

filed and a plea is entered, my experience is that a tremendous percentage—I would not dare estimate what the percentage might be at this time on a reservation—but a tremendous percentage of them are probably going to enter a plea, or they will be negotiated to some social status, or something will be done with it other than the full-blown criminal trial prosecution-type situation. The actual jury trial, where it would be necessary to have the prosecutor there, probably will be at a minimum. I do not have a number that I could even throw at you to give you an idea.

With that, I will retire and listen to questions, if the Senator has any.

Senator MELCHER. Jim, while the arresting officer will be presenting the complaint to the magistrate, the next step of course is, Who will draw up the complaint?

Mr. MCCANN. Right. I could see maybe a person doing that, if there is a format. For example, in the Montana County Attorney's Association, we have adopted and prepared for our own use and dissemination a manual that basically sets out all the elements of each and every single offense that we present. If the magistrate had a manual similar to that, and they may have one—it may be the U.S. attorney's office already has them, I just do not know—then maybe a clerical person under the supervision of the magistrate can take that to prepare a complaint, the officer could sign it under oath in front of the magistrate, as is done now in front of a justice of the peace, for example. Then it may be at some subsequent date an attorney would have to become involved in the case. You know, if the charge is properly brought, it is reviewed by defense counsel, maybe hired or appointed on behalf of the defendant, and after discussion of the case with his client, they may wish to enter a plea. That happens a lot, especially in misdemeanor cases. It does not happen a lot in felony cases, but we are not talking about felony cases.

Senator MELCHER. Are there any deputy U.S. attorneys in northeastern Montana?

Mr. MCCANN. No, the nearest one would be Billings.

Senator MELCHER. Billings or Great Falls?

Mr. MCCANN. Or here.

Senator MELCHER. We will check that out; whether there is a definite format available in the magistrate system for drawing up the complaint, and——

Mr. MCCANN. They have forms, you know, complaint forms that they use, but the spaces are quite lengthy. They mean no guidelines.

Senator MELCHER. No real guidelines. And, just for a point of comparison, under Montana law, the county attorney——

Mr. MCCANN. Yes, we have a manual.

Senator MELCHER. You do have a manual. We will use it as a point of education for us, I guess, so we can see what that form is.

Thank you very much, Jim.

Mr. MCCANN. Thank you, sir.

Senator MELCHER. Jim Halverson, county commissioner, Roosevelt County, Wolf Point, MT.

STATEMENT OF JIM HALVERSON, COUNTY COMMISSIONER, ROOSEVELT COUNTY, MT

Mr. HALVERSON. Good morning, Senator. First I would like to thank the audience and the other participants for allowing us to go ahead. I am with Mr. McCann, so we will be leaving immediately.

Senator, I would just like to read a short statement, if I may. My name is Jim Halverson. I am a county commissioner in Roosevelt County, State of Montana.

Roosevelt County, in northeastern Montana, is partially included in what is known as the Fort Peck Indian Reservation, with the county seat of Wolf Point situated within the exterior boundaries. The Fort Peck Reservation was opened to homesteading, the same as was most of the Western United States, this being one of the reasons that there are more nontribal members than tribal members; therefore, this area is the home or reservation for tribal members, but it is also the home for nontribal members. All residents of this area are citizens of the United States, State of Montana, and city and county. The State, city, and county still provide all the basic services, such as schools, libraries, parks, museums, airports, roads and streets and most law enforcement.

Tribal members have the right to vote in and elect State government officials and county and city officials, but are not subject to the laws and regulations created by such officials. Tribal members can run for and be elected to any local or State government office, be it administrative or lawmaking office, and yet not be subject to whatever laws, rules, and regulations or taxation he may impose so long as he resides on his reservation.

The policy of the U.S. Government for years has been to integrate all people and society as equal with all the same rights and benefits, as well as responsibilities. The exception being when dealing with the people of Indian descent, which seems to be to segregate. Inconsistency such as this can only lead to confusion and problems. In most cases, jurisdiction is still the main issue, not only when dealing with law enforcement, but with credit and other areas.

The business community also suffers. Often new businesses are reluctant to move into these areas because of the jurisdiction question.

Tribal members often suffer lack of credit because of the jurisdiction question. Credit should be afforded to all and at the same time be equally responsible.

I appreciate the opportunity to comment on behalf of Roosevelt County and other local governments within the State. While this is a legal issue and can be far better addressed by the legal profession, addressing and possibly correcting some of the flaws in our system will be of help to all citizens of reservation areas.

The creation of the Federal magistrate will be of some help until such time as Congress addresses the issues of who is and who is not Indian, with what authority, what benefits, and what responsibilities.

Senator, we appreciate your efforts on this bill and your efforts in the past when dealing with reservation issues. Again I thank you for allowing me to be here and for listening to my comments.

Senator MELCHER. Jim, how long have you been a county commissioner?

Mr. HALVERSON. Eight years.

Senator MELCHER. Almost everybody in Roosevelt County lives on the reservation. Prior to that, did you live on the reservation?

Mr. HALVERSON. Yes, I live within the city of Wolf Point, within the exterior boundaries of the reservation. The western two-thirds of Roosevelt County is included in the boundaries of Fort Peck.

Senator MELCHER. And that is about 80 percent of the population?

Mr. HALVERSON. I suppose.

Senator MELCHER. Do you farm yet?

Mr. HALVERSON. No; I own some land, but it is in Daniels County, off the reservation to the north.

Senator MELCHER. What does it involve for your sheriff's office right now?

Mr. HALVERSON. Well, Poplar has a jail, but the jail facility in Wolf Point is the major facility within the county. That is used by the city law enforcement and the county law enforcement, as well as the highway patrol and all others. We do not have a formal cross-deputization agreement with Roosevelt County and the BIA officials, but informally they work well together. They are all concerned whether the job is done and done right. But as far as a written agreement, we do not have one.

Senator MELCHER. Was there ever a formal agreement for cross-deputization between the agencies?

Mr. HALVERSON. Not that I am aware of, Senator.

Senator MELCHER. Is part of the cost of the jail borne by the Bureau of Indian Affairs?

Mr. HALVERSON. No; most of the cost is paid for by the county there. The BIA pays—I am not sure whether it is a $5 or $10 fee per day for housing a prisoner.

Senator MELCHER. If it is their prisoner?

Mr. HALVERSON. Yes.

Senator MELCHER. In the terms of addressing this particular issue, do you feel the bill would be of benefit to the sheriff's office, the county attorney's office, and therefore to the county itself?

Mr. HALVERSON. Anything that will help the situation. Like I said, this is a legal question, and me not being an attorney, I might be at a loss to really comment on what it would do and what it would not do. But talking with McCann and others that are vitally interested in it, I support it wholeheartedly.

Senator MELCHER. Thank you very much, Jim.

Mr. HALVERSON. Thank you.

Senator MELCHER. On the list here, we would have Senator Graham next, but he would prefer to go near the end. So, next we will hear from Earl Old Person. Is Earl here? I do not think Earl is here yet.

Caleb Shields is here to testify for the Fort Peck Tribe.

Mr. SHIELDS. Good morning, Senator. Chairman Hollow has been sick in the hospital and asked me to convey his best wishes for a new year to the Senator.

Senator MELCHER. I hope it is not serious for Norman. I hope he has a speedy recovery.

Mr. SHIELDS. He just got out yesterday.
Senator MELCHER. Glad to hear that.

STATEMENT OF CALEB SHIELDS, COUNCILMAN, ASSINIBOINE AND SIOUX TRIBES, FORT PECK RESERVATION, MT

Mr. SHIELDS. Senator, concerning the U.S. magistrate's bill that is before us, I would like to state that it is a bill that the Fort Peck Tribes have long supported, starting back in 1974, I believe it was, when Senator Metcalf was in office. This legislation is very important to our reservation. At Fort Peck, as on many Indian reservations, Federal law enforcement has been seriously deficient. Under existing law, Federal magistrates can try offenders only with their consent. A person who refuses to consent must be tried in Federal court by a Federal judge.

U.S. attorneys generally are reluctant to prosecute minor crimes, and most Federal judges do not like to try them. Federal law enforcement for minor crimes on reservations becomes ineffective when a person charged with such a crime can insist on being tried in Federal district court.

The problem is particularly serious where non-Indians are charged with crimes of which an Indian is the victim. While tribes have concurrent jurisdiction to try and punish Indian offenders, the U.S. Supreme Court has held in the *Oliphant* case that tribal courts have no jurisdiction over non-Indians committing crimes on reservations. The State also has no jurisdiction to prosecute a non-Indian who commits such a crime against an Indian. Only the United States has jurisdiction over such offenses.

However, except for major crimes, this Federal jurisdiction is often not exercised. The most common crimes on our reservation, such as assaults or small burglaries, simply are not prosecuted in many instances. In large part, this is because the necessary Federal resources have not been allocated to meet the law enforcement needs of Indian reservations. Existing Federal law enforcement is generally distant from reservations. For example, the Federal courts, U.S. attorneys, and FBI agents in Montana are in Billings and Great Falls, over 250 miles away from our reservation.

In addition, U.S. attorneys often have more work than they can handle and typically assign a low priority to the prosecution of offenses on Indian reservations. As a consequence, crimes are committed virtually without fear of prosecution or punishment. This is an absolutely intolerable situation. If criminals go unpunished, of course, criminal activity is not deterred. Lawlessness prevails.

An expanded role for U.S. magistrates is essential to remedy this problem. We strongly support Senator Melcher's proposal to establish special magistrates for Indian country with mandatory jurisdiction over crimes committed on Indian reservations. New special Indian country magistrates are needed, even though U.S. magistrates are already authorized to try minor offenses committed on Indian reservations. Most magistrates are part time only, are limited in their assignments, and seldom devote time to Indian reservation matters.

Another point of interest is all reservations do not have Federal magistrates within the confines of reservations. We do in Fort Peck; we have a Federal magistrate, but he is part time.

We propose two additional provisions to your bill. First, we think the legislation should expand the scope of the magistrates' current jurisdiction on Indian reservations. Magistrates can now only hear minor criminal cases with a maximum penalty of 1 year in jail or a $1,000 fine or both. On Indian reservations like Fort Peck, where magistrates provide the only readily available Federal form for law enforcement, this limitation allows some serious crimes to go unprosecuted. This can include assault crimes, which are very common at Fort Peck. We believe that power should be delegated to magistrates on Indian reservations to try all crimes other than those serious felonies enumerated in the Major Crimes Act (18 U.S.C. 1153).

Second, since a magistrate cannot operate without a prosecutor, a Federal prosecuting attorney should be assigned full time to work with each magistrate. The prosecuting attorney should not be an additional assistant U.S. attorney, since such an assistant would soon find himself delegated to other work. By law, his duties should be limited to prosecutions on Indian reservations.

Where a caseload on a reservation does not justify a full-time resident magistrate, full-time Federal prosecutors could ride circuit along with the magistrates.

The proposed legislation would greatly benefit both Indians and non-Indians living on reservations. For too long, there has been a major vacuum instead of effective Federal law enforcement on Indian reservations.

We welcome the committee's efforts to seek to change this deplorable situation, and urge the committee to give this matter priority consideration.

Thank you for the opportunity to present this testimony. I would be happy to answer any questions you may have.

Senator MELCHER Caleb, we mean for the bill to close that gap right up to those matters before a Federal magistrate, a special magistrate on a reservation, to close that gap right up to the major crimes. If our language is not clear there, we will clarify it.

You are correct, Caleb, that most Federal magistrates are part time only now. At least those who work on Indian reservations, as far as I know, are only part time. I think they would have to be full time under the terms of our bill, or at least their authority would not be watered down, nor would the qualifications for a special magistrate on the reservation be watered down. You bring up the point of prosecution, and Jim McCann brought that up, too. We will have to look more thoroughly at that. I agree with you, unless there is a prosecutor assigned, whether the U.S. attorney or someone else breaks down the timing and breaks down whether or not justice is provided promptly—I think that is an excellent point.

Thank you very much, Caleb. Please give my best regards to Norman. I do hope he recovers soon.

Mr. SHIELDS. Thank you very much.

Senator MELCHER. Is Merle Lucas here, the executive director of intertribal policy board? Merle, we would like to hear from you next.

STATEMENT OF MERLE LUCAS, EXECUTIVE DIRECTOR, MONTANA INTERTRIBAL POLICY BOARD

Mr. LUCAS. Good morning, Senator Melcher. First of all, I would like to express by sincere appreciation to you for inviting me to testify on behalf of the Montana Intertribal Policy Board at this hearing. I have to admit I am not really prepared to testify on behalf of the board, because some of the tribes concerns vary from one reservation to another. I would like to express that Mr. Tom Tail Feathers, who is the current chairman of the Montana Intertribal Policy Board, regrets that he could not be at this particular hearing, and has conveyed to you that he certainly appreciates the select committee's request for comments from the intertribal policy board.

The executive and the judicial branches of Government, as it relates to each respective tribe in the State of Montana, is so complex that I would believe that the comments that you will hear and the testimony provided by the various tribes who are in attendance at this particular hearing, will vary from one tribe to another. I do have, or will be making some comments in regard to the Chippewa Cree Tribe, the Rocky Boy Reservation. And following the comments that I make on their behalf, what I intend to do is at our next intertribal policy board meeting, which is scheduled for January 10, hopefully I will have had an opportunity to talk to all of the Montana tribes to secure their comments, their concerns, suggestions, recommendations, and hopefully put together a comprehensive piece of testimony that would collectively represent the concerns of Montana tribes, and send that to the select committee.

The Chippewa Cree Tribe of the Rocky Boy Reservation has been particularly concerned with the problems of jurisdiction and the prosecution of nonmembers who commit offenses on reservation lands. While we applaud your efforts in drafting Senate bill 3092, the Indian Reservation Special Magistrate and Law Enforcement Act of 1984, nevertheless we are deeply concerned over a number of issues which the bill as currently drafted raises, and we have six issues here that have been identified by the Chippewa Cree Tribe.

First, in what respect, under the present tribal constitutions, will tribal jurisdiction be affected or impaired?

Second, will implementation of this bill effectively undermine tribal judicial systems?

Third, in cases where offenses fall under both tribal and Federal law, under what conditions would tribal or Federal law take precedence? Who would make this determination?

Fourth, would tribal police have the authority to determine whether individual cases are processed through the tribal court or a Federal magistrate? Assuming this to be the case, given present levels of police training, would this not be an unwarranted delegation of authority?

Fifth, precisely how does this bill benefit Indian people?

Sixth, would tribal customs still be recognized under this system?

After thoroughly examining Senate bill 3092, we of the Chippewa Cree Tribe have found no satisfactory answers to these questions. As presently drafted, Senate bill 3092 poses a serious threat to tribal sovereignty. We further believe it is contrary to the spirit of the Indian Self-Determination Act.

The Chippewa Cree Tribe is currently adopting a new law and code and attempting to upgrade the judicial system. Our immediate need is for a full-time criminal investigator. As presently written, we believe that Senate bill 3092 would ultimately serve to undermine the present tribal judicial system, and for this reason, the Chippewa Cree Tribe cannot support it.

Now, these are comments in regard to the Chippewa Cree Tribe. As other tribes present testimony, you will find that their testimony is going to be somewhat different. Hopefully at our January 10 meeting, collectively we can put all our comments together and get a comprehensive report in to the Senate Select Committee in regard to all Montana tribes. That concludes my presentation, Senator.

Senator MELCHER. Thank you very much, Merle. We like these points raised and discussed by tribes and by counties and States, and whatever comes up as the best recommendation for the bill. We are interested in having them. That is one of the benefits we get from a hearing. We start conversation among various groups and various tribes so that we get those comments. We appreciate any further comments that the Montana Intertribal Policy Board will be making. When will you meet in January?

Mr. LUCAS. We are meeting January 10, in Billings.

Senator MELCHER. Whatever comments arise from that, this hearing record will be open until almost the end of the month, so if you submit them, we will make them part of this hearing record.

Mr. LUCAS. Thank you.

[The following material was received for the record:]

MONTANA INTER-TRIBAL POLICY BOARD,
October 31, 1984.

Re MITPB resolution number 84-15.

To: All tribal chairmen.
From: Merle R. Lucas, executive director.

Attached for your information and action is MITPB Resolution Number 15, enacted on October 11, 1984 by the MITPB delegates.

Resolution Number 15 deals with unsolved crimes on the Blackfeet Indian Reservation. This is a very serious issue that demands action. Therefore, we request that this critical issue be addressed.

MONTANA INTER-TRIBAL POLICY BOARD RESOLUTION NO. 84-15

Whereas the Montana Inter-Tribal Policy Board has been organized to represent, develop, protect, and advance the economic, cultural, and social well being of Indian people in the State of Montana; and

Whereas the Montana Inter-Tribal Policy Board is composed of, belongs to, and serves at the direction of the Indian Tribals Councils of Montana; and

Whereas that the major crime situation on the Blackfeet Indian Reservation and other Montana Reservations has grown steadily worse and continues to grow and that many of the major crimes are still uninvestigated and unsolved, and

Whereas that the Blackfeet Indian Reservation residents and Tribal Business Council, as the governing body of the Reservation are completely and totally dissatisfied with the current investigations of unsolved crimes and unsolved homicides, and

Whereas over the past several years the Blackfeet Tribal Business Council enacted numerous resolutions of this nature and has requested at numerous times, assistance of various federal investigatory bodies such as the U.S. Attorneys Office, the Federal Bureau of Investigation and local county and state officials to no avail, now therefore

Be it resolved as follows:

(1) That the Montana Inter-Tribal Policy Board supports the Blackfeet Tribal Business Council and other Montana tribes in their efforts to resolve this situation;

(2) That the Blackfeet Tribal Business Council hereby calls to the attention of the Montana Congressional Delegation this very serious and at present, unaddressed critical situation of inadequate investigation in unsolved homicides on the Blackfeet Indian Reservation and prosecution of crimes;

(3) That the Blackfeet Tribal Business Council requests the opportunity to communicate directly with the Montana Congressional Delegation to discuss the particular cases with the delegation and to discuss also possible alternative solutions to these problems;

(4) That the Blackfeet Tribal Business Council requests that the U.S. Government consider the following:

A. That the U.S. Government establish within the U.S. Attorney's Office, a special office with investigatory and prosecutorial staff to work directly with Tribal and BIA Investigatory/Prosecutorial personnel on reservations for the disposition of major crimes;

B. That the U.S. Government establish within the Federal Bureau of Investigation System a special investigatory staff to work with the U.S. Attorney's Office, Tribal and BIA investigatory personnel on reservations for the disposition of major crimes.

C. That a Federal Magistrate be appointed for each reservation in the State of Montana to provide adequate disposition of major crimes on said reservations.

CERTIFICATION

I hereby certify the foregoing resolution was adopted by the Montana Inter-Tribal Policy Board during a duly called, noticed, and convened meeting held in Billings, Montana on October 11, 1984, with a quorum of delegates voting for the proposed resolution.

———,
Secretary, Montana Inter-Tribal Policy Board.

CALEB SHIELDS,
Chairman, Montana Inter-Tribal Policy Board.

Senator MELCHER. Thank you very much, Merle.

Our next witness is Donald Clayborn, coordinator for Indian Affairs for the State of Montana.

STATEMENT OF DONALD CLAYBORN, COORDINATOR FOR INDIAN AFFAIRS, STATE OF MONTANA

Mr. CLAYBORN. Good morning, Senator. As stated, my name is Donald Clayborn. I am the coordinator of Indian Affairs for the State of Montana. I am here in support of Senate bill 3092, the Indian Reservation Special Magistrate Act, with one suggestion for amendment to the bill as drafted.

I am speaking on behalf of myself and my office. I am pleased to see that this legislation was reintroduced after so long a time, 5 years, to be exact. As the earlier bill did, this bill creates a companion magistrate system for Indian reservations similar to the present magistrate system attached now to the Federal court system.

The bill contains nine sections which outline appointment, tenure, jurisdiction and powers, custody procedures, practice and procedures of the magistrate, contempt process, training section, and filing and authorization of appropriations section review. The legislation is helpful by eliminating the time length and geographic delays that the present magistrate now faces because of the general geographic isolation of the seven Indian reservations.

The Indian magistrates, like their non-Indian counterparts, will be able to try minor offenses, issue summonses, and arrest and search warrants. Special attention should be given to the new section added to the bill in its present form.

This section, 652, jurisdiction and powers, which states, section B:

Each such magistrate so serving under this chapter shall have any other duty or power which may be exercised by a United States magistrate in a civil or criminal case, including any tort action, to the extent authorized by the court for the district in which he serves.

This section is a departure from existing Federal magistrate court jurisdiction.

Under our *Montana* v. *United States,* which allows civil jurisdiction over non-Indians in a tribal court, the court said, to be sure, Indian tribes retained inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservation, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of non-members who enter consequential relationships with the tribe or its members through commercial dealings, contracts, leases, or other arrangements.

The tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe.

I realize that this piece of legislation may solve many existing problems of court administration as it now exists. However, a clarification of section 652 is appropriate. In its existing form, it raises questions of future implication of travel court administration.

Thank you, Senator.

Senator MELCHER. That section B on page 5 is the same as within the other bill, except for those four words in parentheses, beginning at line 9 and extending halfway through line 10; those words being, "Including any tort actions," which of course is explanatory rather than additional.

Do you think that poses a problem? As the bill was drafted before, the Federal court could assign to such special magistrate any civil or criminal case that they felt was necessary.

Mr. CLAYBORN. Yes, Senator, I think it raises the issue of future administration for tribal courts, sovereign power. I also, as stated in my testimony, feel that an amendment or a clarification of this particular section, perhaps with a concurrent jurisdictional review or a right of first review by the tribal court, as far as civil court or court actions are concerned, may be appropriate. Again, I think the question needs to be addressed.

Senator MELCHER. Do you think that an action within a tribal court should be eligible for review by Federal court?

Mr. CLAYBORN. Well, that suggests a double-edge sword, if you will. I think in terms of this particular bill, it would probably take place if we had a right of first review or a concurrent jurisdictional review on tort actions in civil cases only. You may correct me if I am wrong, but I think at this time, it is not appropriate, that that does not take place as far as civil actions on the reservation and decisions handled by a tribal court.

Senator MELCHER. Jim Halverson said he was not a lawyer and would leave legal judgments up to lawyers, and that is nice of him. There must be several of us in this room—I hope there are—who are not lawyers. Maybe the majority of us really are not lawyers,

but we do have to arrive at something in our own minds if we are going to agree on the bill, and that is how do you get from a tribal court into a Federal court? I do not know how you do it.

Mr. CLAYBORN. Well, first of all, Senator, I would like to say that I am certainly not a lawyer. I work with lawyers on occasion in my business, and in reviewing the bill and what I see as possible implications for future tribal court administration, I again will say I think that section needs to be clarified.

Senator MELCHER. Thank you very much, Donald. I think that is an important point you brought up. I do not know how to clarify it any more than we have, or how far to go in describing what we are trying to do here, but maybe others will have more to add to that particular point. I think it is a very significant point in the bill.

Mr. CLAYBORN. Thank you, Senator.

Senator MELCHER. Our next witness is James Nelson, county attorney for Glacier County.

STATEMENT OF JAMES C. NELSON, COUNTY ATTORNEY, GLACIER COUNTY, MT

Mr. NELSON. Thank you, Senator. My name is James C. Nelson, I am the county attorney for Glacier County, MT, a county which is substantially comprised of the Blackfeet Indian Reservation.

During the time that I have been the county attorney, I have been made painfully aware, by calls from residents of the reservation and by talking with Indian and non-Indian people and law enforcement authorities, of many problems and inadequacies of law enforcement and court structures on the reservation, particularly in the area of minor criminal offenses.

As the law presently stands, State courts and law enforcement from the State have virtually no jurisdiction on any reservation by either statute or case law. All criminal offenses committed by or against an Indian on the reservation, and any offenses committed on trust or tribal land must be prosecuted either by the tribe or by the Federal Government. Tribal jurisdiction is limited to the prosecution of minor offenses committed by members of the tribe. Accordingly, a substantial investigative and prosecutorial burden falls upon the Federal Government, and I can tell you from personal experience that that obligation is not being met.

In making that statement, I am not criticizing the present Federal or tribal law enforcement authorities on the reservation, nor am I critical of the U.S. attorney's office. Existing law enforcement and investigative personnel and Federal prosecutors are understaffed and are, in my opinion, overwhelmed with the ever increasing caseloads with which they must deal. As a consequence, however, a good portion of the minor crimes and offenses on the reservation go either uninvestigated or unpunished or, tragically, both.

The fact that law enforcement prosecutors are understaffed and overworked is unfortunately of small consequence to the victim of a crime who has no proper redress. More importantly, however, lack of proper law enforcement and prosecution breeds disrespect for the law and an ever increasing crime rate which, coupled with the astronomical rate of unemployment and substance abuse on the reservation, makes the life of many Indian and non-Indian

people trying to live and raise their families in the reservation community an absolute hell.

Many reservations have become havens for drug dealing, thieves, and hoodlums who have come to realize a safe haven from apprehension and prosecution because of inadequate law enforcement and inaccessible court systems. Many Indian people and non-Indians alike, living on the reservation, literally live in fear of their safety and lives and for those of their families.

Hopefully, the Indian Reservation Special Magistrate and Law Enforcement Act will be an important first step in remedying this unconscionable state of affairs. By having a special magistrate readily accessible to issue complaints, arrest warrants, and search warrants, Federal and tribal law enforcement authorities will be able to quickly and effectively respond to much of the minor crime that now goes uninvestigated or unpunished. Even the mere presence of a Federal magistrate on the reservation will serve to demonstrate the Federal Government's concern for law enforcement on Indian reservations, and will also serve as a deterrent to those who consider the reservation a convenient place for criminal operations.

As a prosecuting attorney, I am strongly in favor of Senate bill 3092. I believe that the Indian and non-Indian people on reservations deserve and can rightfully demand no less effective law enforcement and court systems than the rest of American citizens enjoy. Further, I would respectfully urge the Congress to strengthen and increase law enforcement and prosecutorial services on Indian reservations, for without proper investigation and prosecution no court can be effective.

I fully concur with the testimony of other witnesses to the effect that this bill must be expanded to include the assignment of a prosecutorial staff to reservations. Without prosecution, the effectiveness of this bill, I believe, will be emasculated.

Finally, I would respectfully urge the Congress to repose in the special magistrates even greater jurisdiction over both criminal and civil matters arising within Indian reservations and with respect to Indians and non-Indians alike, to the end that the present jurisdictional morass between tribal courts and State courts, between tribal authorities and State authorities, between tribal governments and State and local governments, and between Indians and non-Indians which have been created piecemeal through Federal and State court cases, can once and for all be eliminated.

I thank you very much, Senator, for your concern in this matter and for this opportunity to lend my support to this proposed legislation.

Senator MELCHER. Let me touch on the point of having the prosecutor there. Now, should that be part of the U.S. attorney's office?

Mr. NELSON. Yes, Senator, I believe it should be part of the U.S. attorney's office, and I would concur with the comments of one witness that perhaps where the caseload of an individual reservation did not justify the appointment of a full-time U.S. attorney or assistant U.S. attorney for that reservation, certainly there should be a prosecutor that would ride a circuit to handle these matters.

I think what you are going to find is that with the appointment of U.S. magistrates, they are going to increase the availability of the court to prosecute cases, and once the defense counsel whom

they use on reservations finds out that there is none readily available to prosecute those crimes, that is going to be the best defense in the world.

Senator MELCHER. Have you seen the U.S. attorney on the reservation, any U.S. attorney? Not a deputy. How long have you been county attorney up there?

Mr. NELSON. I have been county attorney 6 years.

Senator MELCHER. Have you seen the U.S. attorney on the Blackfeet Reservation?

Mr. NELSON. I frankly have not, no. I have met with Mr. Dunbar on some matters.

Senator MELCHER. I do not care just about Mr. Dunbar, any U.S. attorney: not any deputy, but the U.S. attorney.

Mr. NELSON. I have not, Senator.

Senator MELCHER. I think it would be interesting to find out when the U.S. attorney—no matter which one, going back the last 50 years—has been on any reservation. Carroll, have you seen one on the Crow?

Senator GRAHAM. Absolutely not.

Senator MELCHER. I mean the U.S. attorney?

Senator GRAHAM. No.

Senator MELCHER. I do not recall the U.S. attorney, whoever he was—who was the U.S. attorney in 1980? Could someone supply me with that? Bob O'Leary? I do not remember seeing Bob on a reservation.

VOICE FROM THE AUDIENCE. Pete had come down and discussed matters with us at the reservation.

Senator MELCHER. Bob did?

VOICE FROM THE AUDIENCE. Bod did, too. O'Leary, Zimmerman, Pete Dunbar.

Senator MELCHER. Well, Carroll, you must not have been home that day. But at any rate, the U.S. attorney seems to me to be rather remote from the problems on reservations, and I just do not think our system has worked right. I know we have had a deputy U.S. attorney come to reservations, and that is fine, but we do need more attention out of the U.S. attorney's office.

So I guess what you are saying, Jim, is this prosecutor should not just be a part-time assistant out of the U.S. attorney's office; he should be a special assignment?

Mr. NELSON. I do not think so, I think it ought to be a special assignment, and perhaps would be the case where one U.S. attorney or deputy, however they want to do it, would handle several reservations. I think that may be the case, but I think there is enough expertise in dealing with Indian law matters that that could very well occupy full-time the attention of one attorney who was an expert. The way it stands now, it is that minor crimes simply are not being prosecuted.

Senator MELCHER. They are just going by the board. The major crime happens and the FBI comes up and investigates.

Mr. NELSON. Well, yes, And if it is really minor, they do not even get involved in it, because there is so much major crime that they have to deal with. I had an incident several—well, about 2 years ago, involving, again, like Jim McCann, an assault on the reservation. This was one by a member of the tribe against a nonmember,

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and this woman was literally beat to a pulp. I called the U.S. attorney's office, and the first thing I was asked is, was there a weapon used? Unfortunately, or I guess fortunately for her, there was not. He used his hands and his feet.

That was the last I ever heard of it. And, you know, that is wrong. That is just wrong.

Senator MELCHER. Well, you raise the same point that Caleb Shields raised, and I think it is a very good point and one that has not been properly addressed in the bill. So if we get a bill that looks like it has the horses to pass it in Congress, we will make sure that we have a section in there dealing with the prosecuting attorney.

By the way, I will say this to you, Jim, and to all the witnesses, now and in the future, do not be bashful or reluctant to supply definite concrete language that you think would be good in the bill, because we appreciate that very much.

Thank you very much.

Mr. NELSON. Thanks, Senator.

Senator MELCHER. Fred Johnson, county commissioner, Glacier County.

STATEMENT OF FRED JOHNSON, SPECIAL COMMITTEE MEMBER, STATE OF MONTANA, ALSO REPRESENTING THE MONTANA ASSOCIATION OF COUNTIES AND THE NATIONAL ASSOCIATION OF COUNTIES

Mr. JOHNSON. I want to thank you, John, for having me come up here today and testify on the reservation. My name is Fred Johnson, and I am a special committee member for the State of Montana. I represent the Montana Association of Counties and the National Association of Counties. In all Indian problems, we work with the State and the Federal Government and work with our problems that come up between members of the tribe and nonmembers of the tribe. We also work with the tribal council.

The Federal magistrate court system, Senate bill 3092, can solve a lot of problems on the reservation. For the members and special members and nonmembers of the tribe operating together, the law is not working very successful, according to the report from the sheriffs and reservations in counties listed below. We have 17 different sheriffs and different counties that are not very happy with what is going on on the reservation or with the law. I have their support in the testimony I am giving here, and I think here—if we have the support of the testimony I am giving—the magistrate judge should have complete jurisdiction over problems that take a court decision between nonmembers and members of the tribe. He alone can make a decision. If it takes a jury, the jury should be picked at large, the same as the district court, and that way with equal opportunity, no one could complain.

I do personally believe, Senator, that we can get something like this settled between the nonmembers of the tribe and the members of the tribe. We should take all cases to the Federal magistrate system so that the members of the tribe and the nonmembers of the tribe and the counties can work as neighbors on the reservation and not as powers. I think we will have a good situation here.

I work with all the tribes on solving problems. Everything we can work with, if the tribes do not do good, we do not do good, the counties do not do good. We hope to solve some of these problems. We can work together up there, and if we are going to work together on the reservation, we have got to solve our problems together. We must work as neighbors and not through lawsuits. They will go on forever, never will be settled.

I worked with John here for the last 10 or 11 years. On all these, he was very helpful. Senator Melcher here has worked very hard with us, and we have worked on a lot of different things to try to make the reservation work together. And I think if we can do something like this we will have good success.

Thank you, John.

Senator MELCHER. Agreed. We have a resolution, which you submitted, by the National Association of Counties. Are you going to make that a part of the record?

Mr. JOHNSON. Yes. Somebody said on a national network and in the New York Times that we wanted to abolish the reservation. We have never had anything like that in the minutes of our meeting. There is no way in the world to abolish reservations. I do not know where this started. I tried to stop it, and I did stop it, to get this taken care of, because we want to work with the tribes and try to solve these problems.

Senator MELCHER. You represent the State of Montana with the National Association of Counties on Indian Affairs; is that correct?

Mr. JOHNSON. Yes.

Senator MELCHER. Is your testimony to the effect, then, that the National Association of Counties is in favor of the bill?

Mr. JOHNSON. I have not talked to them on that subject. Now, we presented this bill to the National Association of Counties, then the National Association of Counties, about 5 years ago, when you first started out—do you remember? They were in favor of it at that time.

Senator MELCHER. We would appreciate before this hearing record is closed, if you ascertain for us if the Montana Association of Counties endorses the bill. Also whether or not the National Association of Counties endorses the bill, or if they endorse it with recommendations, and if so what their recommendations are. That would be most helpful. What we are really lacking in passing any kind of a bill dealing with this matter, as I mentioned in my opening remarks, is a feeling that it is significant nationally, so that the administration itself and other Members of Congress, who do not live on or near reservations or in States that have Indian reservations, will have an interest in seeing the bill passed, too.

Mr. JOHNSON. Would February be too late to do that?

Senator MELCHER. Oh, no; February will not be too late.

Mr. JOHNSON. I will be back in Washington, DC in February, and we will have a meeting. We will take what we have here back there, and when all meet, I will bring this up. If there is any way in the world that we can put nonmembers of a tribe and members of a tribe into a magistrate court system, if anything like that can work, we are sure that we would have a good place on the reservation for it to work. I will do this for you, John. I will be back in

Washington, DC in February, and I will take it up with the national and I will report back to you.

Senator MELCHER. Yes; we have been dealing with John Maxwell of the National Association of Counties staff in Washington on this. What type of meeting is coming up in February in Washington?

Mr. JOHNSON. That is our legislative meeting. All the different States come in there and we meet and discuss all these problems.

Senator MELCHER. I see, so that will be one of the topics of that meeting?

Mr. JOHNSON. That will be a topic. I will bring that up in the meeting and we will discuss it while we are there.

Senator MELCHER. Yes; that would be fine, that would be very timely for us. This particular hearing record will be closed, but that makes no difference. There will probably be subsequent hearings on this matter, at any rate, sometime in February or March.

Thank you very much.

Mr. JOHNSON. Thank you very kindly.

Senator MELCHER. The resolution will be inserted in the record at this point.

[The resolution follows:]

RESOLUTION

(Proposed by Indian Affairs Subcommittee)

Whereas Indian Tribes claim to have significant governmental authority and powers within their existing reservations.

Whereas many existing Indian reservations have significant non-Indian populations and large amounts of non-Indian owned lands within their boundaries.

Whereas the states and counties have major responsibilities within existing Indian reservations.

Whereas Indian reservation trust lands are not taxable by the states or counties.

Whereas Tribal funds are not used to fund any state or county functions whatsoever.

Whereas Congress has plenary authority over Indian affairs by virture of the United States Constitution.

Be it resolved, The National Association of Counties formally requests the United States Congress to enact legislation which would limit Tribal sovereignty to Tribal and individual Indian trust lands and Tribal members only.

Senator MELCHER. Is Bill Joy, sheriff of Big Horn County here? Are you accompanied by John Vogel?

Mr. JOY. No; John is not here today, but I do have a representative from the Crow Law and Order Committee, and also a deputy of Big Horn County who would like to speak.

Senator MELCHER. All right, maybe you would like to approach right now. We are ready to hear from you. However you would like to do it. If you would like to stand like the other witnesses, one at a time, or you may sit if you prefer.

STATEMENT OF TOM MEDICINE HORSE, SECRETARY, CROW TRIBAL LAW AND ORDER COMMISSION AND DEPUTY SHERIFF OF BIG HORN COUNTY, MT

Mr. MEDICINE HORSE. My name is Tom Medicine Horse. I am the secretary of the Crow Tribal Law and Order Commission and a deputy sheriff of Big Horn County.

This afternoon I want to talk on the bill and express the wishes of the Crow Tribe. The tribe feels that passage of the bill would se-

riously erode and hamper tribal court and some of the inherent rights that we have. The Crow Tribe is one of the very few tribes in Montana or across the United States that retains our culture. We are a very culturistic tribe, and the tribe does not see whereas the bill would benefit the tribe or tribal government or alleviate any of the problems that are present on the Crow Indian Reservation. Perhaps the bill should be clarified a little bit in regard to some of the culture and customs of the Crow Tribe.

And then in the field of the court and civil aspect, it has four words. Then in parentheses—we are not too aware of what the intent is here. Maybe if that were clarified and some of the other areas of concern that we have were explained so that we could have a better understanding of this bill, it might help some members of the Crow Tribe to make up their minds. However, there are some people here from the tribe who are going to testify.

My testimony is on behalf of the commission. The commission feels that passage of the bill would seriously hurt sovereign inherent rights of the tribe. At present, I am employed as a deputy sheriff of Big Horn County and have been for 2 months. I am a retired BIA special officer having worked Minnesota, Arizona, Nevada, Wyoming, Washington, and the Blackfeet Reservation in Montana. I have had a lot of experience in Indian reservation law enforcement and I am not a newcomer.

There are some problems, I agree with you, regarding prosecution of crimes. However, as I stated to the commission, I feel that these matters can be handled with the strengthening of the tribal court system.

And the last thing I want to bring out is, that we feel, in the Crow Tribe, that we were not consulted on this matter. We did not have any input into it, so we are not too sure of what the intent is here.

That is the end of my testimony, and I thank you.

Senator MELCHER. What are the cultural matters? Can you share that with us?

Mr. MEDICINE HORSE. Yes, we have a clan system that still exists on our reservation, where some of the offenses that might be prosecutable in tribal court or Federal court even, is sometimes taken care of between clans. Also, things that are not considered a crime might be so considered in the white man's court, this type thing. So we are talking quite a bit of difference here.

Some of the other tribes may still have this system on their reservation, I do not know. I can not really say.

Senator MELCHER. It is still a mystery to be what you are speaking about, but whatever you are speaking about, does that apply to members of the Crow Tribe?

Mr. MEDICINE HORSE. Yes, to members of the Crow Tribe.

Senator MELCHER. And not the nonmembers of the Crow Tribe?

Mr. MEDICINE HORSE. No.

Senator MELCHER. So it would not be a matter that would logically come before a magistrate at any point, or is it a crime serious enough?

Mr. MEDICINE HORSE. Well, I am not really talking about crime. An event that might have occurred within the clan system which

the white people might consider a crime but which the Indians would not.

Senator MELCHER. There would not be a complaint, then, in other words?

Mr. MEDICINE HORSE. There would not be a complaint then.

Senator MELCHER. I think we can rest easy on that point, because I do not think there is anything in the bill that would bring it before the magistrate if there were no complaint.

As to this question of whether or not you were consulted, I do not know where you were personally, Tom, during the past 4 years plus, but when we were talking about this bill, you were probably busy enforcing the law in one of those reservations you reeled off. When did you leave the BIA?

Mr. MEDICINE HORSE. In 1972.

Senator MELCHER. Well, wherever you were in 1979 and 1980--

Mr. MEDICINE HORSE. In 1979 and 1980, I was in Red Lake, MN, I think.

Senator MELCHER. Well, that is a State that is exempt. That is a State where the State has jurisdiction on the reservation. Is that correct?

Mr. MEDICINE HORSE. No, not on Red Lake. It is still under——

Senator MELCHER. Partial, then, Red Lake?

Mr. MEDICINE HORSE. No, it is not partial.

Senator MELCHER. Not Red Lake, but the State itself is partial; right?

Mr. MEDICINE HORSE. Right, the State is partial.

Senator MELCHER. Partial 280 and partial non-280.

Well, at any rate, then we are not trying to come out with a brand new idea. This bill has been around. I think Crow people testified in March of 1980 if I am not mistaken. We can go back on our hearing record, but this bill is not new and is not one that is unfamiliar to the Crow people.

Mr. MEDICINE HORSE. We have 30 days to submit a statement; is that correct?

Senator MELCHER. Oh, just to tell you who testified for the Crow Tribe in 1980, it was Urban Bear Don't Walk. I do not know where Urban is now, but he testified on behalf of the Crows in 1980.

Mr. MEDICINE HORSE. We would like an opportunity to submit——

Senator MELCHER. Yes, if you want additional time beyond 21 days, we will hold the record open for 30 days.

Mr. MEDICINE HORSE. OK, thank you.

Senator MELCHER. And, in 1980, from the Crow Tribe we had Alex Gaforge, Sr., chairman of tribal law and order commission; Dale Kindness, member; and Alvin Howe, chief. So, along with Urban Bear Don't Walk, the Crow Tribe was well represented in the hearings in 1980. You might want to go back over their testimony, and we can supply it for you if you would like, but we do want you to update it and make any comments you wish to make.

Mr. MEDICINE HORSE. OK.

Senator MELCHER. I cannot comment on the part of whether or not this hurts the sovereign rights of the Crow Tribe, because frankly, I do not know what those sovereign rights are. Nobody has ever been able to identify them very explicitly, and we seem to be

going along sort of in the dark, or if it is not dark, it is not very clear daylight on what the sovereign rights of any tribe are. We certainly do not know where tribal court jurisdiction begins or ends, especially when you get involved with matters between Indians and non-Indians and between members of the tribe and non-members of the tribe who are Indian. Often we also do not seem to know where it begins and ends between members of the tribe. We are trying to build something here that would clarify where we are. So, any comments the Crows wish to make regarding the bill, we will appreciate.

We do not expect everybody to be for the bill, and we expect people to point out the areas in which they disagree. We welcome that just as we welcome any discussions to strengthen the bill, because we do have to have all the plusses and the minuses discussed in this hearing process.

Thank you very much, Tom. Are there other members of the tribe who want to testify also?

TESTIMONY OF BILL JOY, SHERIFF, BIG HORN COUNTY, MT

Mr. JOY. I appreciate your inviting me to this hearing. I have been in office for only 2½ years, so there is a lot that I do not know. But, I have worked as a law enforcement officer for the last 25 years in Big Horn County.

One of the issues about which I have some reservations is, what is it going to cost us? There are big bucks involved in this, and I do not know that we have the money to afford this type of a system. It seems like a very cost-plus program.

I have been working for the last 2 years with the Crow Tribe and with the tribal leaders, the law and order committee and the tribal court system. We had a meeting on December 26, and on that date, the tribe and the superintendent of the Crow Reservation and law and order committee of the tribal court resolved that they would like to come to a local agreement. They thought that a local agreement would do more good at a local level than it would do at a Federal level. We will be having a meeting on January 4—which will be tomorrow—at 10 a.m. in Crow Agency trying to get an agreement working with the county and the tribe.

The county attorney is not here today, but he will be working on this agreement. I feel that we need some time to firm up some of our areas that we have been working on for the last 2 years trying to get some type of workable agreement going.

Thank you.

Senator MELCHER. Bill, did you say you have been in law enforcement for 25 years?

Mr. JOY. Yes.

Senator MELCHER. Is that city and county?

Mr. JOY. City and about 2½ years county.

Then they consolidated the force. The city and the county are now consolidated.

Senator MELCHER. The city of Hardin and the county are now consolidated?

Mr. JOY. Yes.

Senator MELCHER. But not for 25 years, I don't suppose?

Mr. JOY. No, I only worked from 1977 through 1979 for the sheriff's office. I was out for 2 years, and then I ran for election and was elected in 1983.

Senator MELCHER. And prior to that time, you had worked for the city of Hardin as a police officer?

Mr. JOY. Yes, sir.

Senator MELCHER. You have dealt with law and order problems on or near the reservation for a long period of time, then.

Mr. JOY. Right. The jurisdictional problem is a real problem. I disagree that we need some new system, but I do feel that a local system would work far better than a Federal system.

Senator MELCHER. You do agree some new system is necessary?

Mr. JOY. Yes; there is a need for a new system, but I think it could be done more on a local level. And from some of the other testimony, I am hearing the same thing, or at least I believe I am hearing the same thing. That is, that a local level is going to be more effective. We are going to put money into a Federal system. I think we would be better off to put the money into the tribal court system and get the little things that the tribal court system does not have the power to do—get that stuff straightened out. Then we would have a lot better system. With seven reservations in the State of Montana, I think that you are going to find that we are going to have to have something that is going to be an interlocal thing rather than a Federal thing.

It is real hard for us to work at the Federal level because there are some missing links between the local level of law enforcement, the Federal level, and the U.S. attorney's office level. It does cause some problems. I think if we could get those links together, we would be a lot better off as far as law enforcement goes on our reservations and off the reservation.

Senator MELCHER. You mentioned the cost. Of course the cost is not in the bill. It is a Federal cost, but nevertheless it is out of everybody's pocketbook. Do you know what is being spent now? Is there any apportionment?

Mr. JOY. I think in the tribal court system—it is contracted right now—it is about a million dollars or half a million. I do not know exactly; I have not really researched it.

Another thing that we can do—this is one of the things that I have addressed in the years I have been in Big Horn County—is the alcohol and drug abuse problem. We could spend more money on education about alcohol and drugs and have less crimes committed on the reservation and off the reservation, because alcohol and drugs are a great factor in all crimes nationwide. And so, some rehabilitation programs would work just as well and be more cost efficient. That is my feelings on it.

Senator MELCHER. Who is the county attorney?

Mr. JOY. Clarence Belue is the elected county attorney as of November 1984. Mr. Seykora resigned in the spring of 1984. He went to the U.S. attorney's office and works for Pete Dunbar. Then they appointed an acting county attorney for several months until the election came up this fall.

Senator MELCHER. Yes; and John Vogel is a deputy county attorney?

Mr. JOY. Yes, sir, he is. He could not be here today because of a death in the family.

We will be contributing more input into this at a later date, and I will keep you posted on the things that we are going to do tomorrow in the meeting with the superintendent and the county and the tribal court people in Crow agency.

Senator MELCHER. We appreciate that very much, Bill. I think there might be some good suggestions coming out of your meeting, and particularly in what the suggestion would be, as you have outlined, for a local agreement between the Crow Tribe, the sheriff's office, and the county attorney's office.

Mr. JOY. Yes; you understand also that the Bureau is the police force down there now; it is not contracted by the tribe.

Senator MELCHER. That is right.

Mr. JOY. It is a Bureau police department.

Senator MELCHER. The Bureau of Indian Affairs actually is in lieu of tribal police?

Mr. JOY. Right, and we have no problems working with the Bureau. We have had good luck with the Bureau. But it is just missing links. Also, there may be the possibility that we will probably cross-deputize. There has been some talk about it, but it has not really been firmed up well enough at the present time to say, "well, we are going to do it" or "we are not going to do it." But the consensus that I am hearing at the present time is there will be some type of cross-deputizing and jurisdictional things done with being able to extradite people off the reservation who are enrolled members—something to that effect.

Senator MELCHER. Do you believe, Bill, that if you do arrive at some sort of an agreement, that there should be an appeal from the tribal court?

Mr. JOY. Oh, I think there will be.

Senator MELCHER. Should it be State or Federal?

Mr. JOY. I cannot talk about other reservations, because I do not work there, but the Crow tribal court system, in the 15 years I have been there, has come up and it has become a very good court system. There are problems with it, but they are working those problems out, and I think eventually that they will be able to handle a lot more than they have been able to handle in past years. In the last 2 or 3 years, they have really made some real strides forward.

Senator MELCHER. Thank you very much, Bill. Are there other members of the Crow Tribe who would like to testify? Yes; will you please approach right now?

TESTIMONY OF THOMAS ROUNDFACE, ASSOCIATE JUDGE, CROW TRIBAL COURT

Mr. ROUNDFACE. Thank you, Senator. My name is Thomas Roundface, and I am an associate judge with the Crow Tribal Court. I was sitting back and listening to some of the testimony given by Tom Medicine Horse and Sheriff Bill Joy. One of the things that they brought up in regard to the tribal court system was from your last hearing that you had regarding this bill. Many attempts have been made locally to form agreements. At that time,

we had tribal police officers, and Bureau of Indian Affairs police officers were requested to enforce laws. Now we are using the Bureau of Indian Affairs. The other attempt was that we enter an agreement with the State of Montana.

Now, locally, we have made attempts to enter agreements. The biggest problem I have with your bill at this time is that we have done basically what you have asked, not only administratively, but through efforts by individuals, as Mr. Joy has pointed out, by electing certain individuals that would work with us. Now, the biggest problem I have with your bill, as a member of the tribe and also as an associate judge of the tribal court, is that you would undermine our civil regulatorial authority from the tribe because of our zoning codes, our traffic codes, and all the other regulatory authority that we thought we possessed. Mainly what I mean by this is our regulatory authority over our tribal lands.

Some of our tribal lands are being leased by non-Indians. Now, we are getting into tort actions, and the thing that I am afraid is going to happen on down the road is that no matter where you put the magistrate, the difficulty we are going to have is providing a prosecution system.

The U.S. attorney's office now—the ex-senator over here had mentioned the fact that the U.S. attorney had not come to the Crow Indian Reservation. He has been there several times. We have talked about the most difficult area which is the criminal.

Senator MELCHER. Just to make that straight, Bob O'Leary and Pete Dunbar have been to the Crow Tribe?

Mr. ROUNDFACE. Yes. And one of the things that we looked at was the difficulty of the FBI making investigations. So Mr. Dunbar had allocated some authority to Federal officers, under the Bureau of Indian Affairs, to conduct investigations and to present their complaints to the U.S. attorney's office.

Now, this takes place on my reservation. I do not know about anyplace else, but all these attempts have been made. Yet again, you are coming back with a bill and at the same time now you are adding civil. We tried hard. We are contracted with the Bureau of Indian Affairs. The figure that you heard of half a million dollars is not true. We have $63,000 that is being funded under the contract for the Crow tribal court. Thirty thousand dollars of that is coming from the tribe itself, so we are funded both by Federal contract and by the tribe.

Now, in all the areas that you are bringing up here in the writeups that I have seen—I just noticed this about Thursday of last week—was the mention of credits. Now, on my court system, we allow individuals, non-Indians to file civil matters in tribal court, and vice versa, under the Indian Civil Rights Act. Basically what you are doing here is you are building up a system to formulate more red tape that is not going to help the system whatsoever. The U.S. attorney's office is bogged down, the Federal district courts right now have more cases—they like Indian cases, but right now they are bogged down with a lot of cases. Adding a new system would not help. I would say, put the money where it is really needed, put it locally where we can utilize it. We are listening to you. You have called my office a number of times and you have talked to my personnel—you have not talked to me directly. Basi-

cally the tribe is being controlled by Congress, we realize that. We listen to you.

Every contract that has been formulated, we try to understand what you want. We draft these contracts or these proposals to get these grant moneys. I am sorry to say that sounds like I am standing up here and saying I am a welfare case, but my resources are restricted at this point. As a tribal court system goes, I have to abide by the laws passed by the tribe. What you are doing here on this bill is undermining the Crow Tribe.

I am having difficulty with all of this. It is not going to benefit anybody.

Senator MELCHER. What system do you have for appeal?

Mr. ROUNDFACE. In my tribal court system the appeal process stands as follows: First, you have a trial level; and Second, you have an appellate court system that I have in my system. Now, the appellate court system is made up of the two nonpresiding judges plus an attorney, who is supposedly a non-Indian, who is familiar with Indian law. This is our appellate process.

Senator MELCHER. Is there no appeal into a Federal court system?

Mr. ROUNDFACE. Oh, there is an appeal in Federal court. No matter what I do, there is an appeal into Federal court. You have your safeguards, the Civil Rights Act. Due process is the key area in the Civil Rights Act, so in the tribal courts, it has been done. That is the main point right there, you have your appeal process.

I think what should be done locally is an agreement instituted by the counties and the tribes to look at these problems that you have in criminal areas, rather than make an attempt to undermine the tribes.

We are having a rough time as it is trying to regulate law sometimes. The Bureau is standing there telling us, "You are not doing it right," and I, at the same time, am sitting there saying, "Well, is it right or not?" I have to wait for the U.S. solicitor's opinion, which is just an opinion, but that is basically the system I have to follow.

Senator MELCHER. Do you have many cases arise in tribal court involving both Indians and non-Indians?

Mr. ROUNDFACE. Oh, definitely.

Senator MELCHER. Is that the bulk of the cases?

Mr. ROUNDFACE. Yes. Just in the past few years, 1980, from then forward, we had a lot of outside creditors coming in against members of my tribe. On the other hand, we had marriages, which is a civil thing, of non-Indians and Indians. That type situation occurs on the reservation. Yes; there has been an increase.

Senator MELCHER. Thank you very much, Tom. Who else would like to testify?

Mr. ROUNDFACE. Thank you.

TESTIMONY OF KAYLE HOWE, MEMBER, CROW TRIBAL COUNCIL

Mr. HOWE. Thank you for having me here today, Senator Melcher. My name is Kayle Howe, and I represent the Crow Tribe on behalf of the tribal council. I was asked to come and address this meeting this morning to give some testimony on the fact that the

Crow Tribe, as was mentioned by my partners, members of the tribe, that I did attend and give testimony at the 1980 hearing held in March in Hardin. At that time, the biggest concern raised by the non-Indian community, as well as the Indian community, was financial burden.

Your U.S. attorney's office is considerably well equipped with attorneys, preferably in the field of Indian law, claiming that they were overburdened, as has been mentioned here before, with the compiling of cases from the Indian reservation. As you all know, I believe the State of Montana has the largest influx of Indian reservations—seven, to be correct. This may stipulate a burden as to the court systems presently being set up. However, if—and I might stress that I am mentioning "if"—if the bill should be accepted and it should be passed and made into law, what avenues of escape would be taken as far as prosecution?, which was also mentioned. And having your magistrate located right in the heart of each reservation, made readily available to the officers within these various jurisdictions, which would consist of Bureau, tribe, local—meaning State, city, county—to get their warrants and subpoenas issued if need be; matters of this sort, habeas corpus, people being held for certain matters. These are problems that are going to need to be addressed, and I feel that should be put into the record so that you, as the Senator presenting this bill, making modifications and amendments to better coincide with what you are trying to present.

I, however, do not at this time feel that this bill is going to actually stipulate and curb any activity on the Crow Indian Reservation. Say, for instance, in a working relationship with the county attorney's office, while I at the time was tribal prosecutor for the Crow Tribal Courts, had made various attempts before and after the hearing to get Mr. Jim Seykora to come and sit down and draft an agreement with the tribal court and the county attorney's office as to extradition. We do have an extradition law in our tribal code, our law and order code; however, it States that there will be an agreement between all entities of government who want to enter into an extradition agreement.

Therefore, giving the tribe the use of its sovereign and inherent rights—as you mentioned, you are very limited in your knowledge of sovereign rights. Sovereign rights, I believe, are being brought into the tribal courts through past legislation of Congress. These matters, as you have mentioned yourself for the record, are you have very limited knowledge of sovereign inherent rights imposed upon the Crow Tribe as well as tribes throughout the Nation.

I believe that you, as a selected member of an Indian Affairs Committee, should look into these matters, be more aware of what is taking place before addressing matters of this size. I am not in any way critical of your position. I believe that you have probably the best background for certain matters such as this, having come from the eastern part of Montana and having lived here, being a rancher, veterinarian, and what-have-you. You have a background for holding this position. I have no qualms or quarrels with that matter. However, I would like to, at this time, extend an invitation on my behalf and on behalf of the Crow Tribe to come to the Crow Reservation, sit down with the Crow Tribe, the county attorneys,

the county commissioners, and Sheriff Joy, as he has expressed here, with the Bureau of Indian Affairs, to see if we cannot come to an agreement as to what and how this bill is actually going to benefit the tribe, the county, and the State because financial burden has already been imposed upon the tribe, the State and the county.

Past legislations that have been brought up, where the tribal court was established, was to try and relieve some of the matters that were being clogged in the Federal and State courts. However, at this time I believe that certain matters have been brought up by individuals not mentioned, or even known at this meeting, that maybe this present awareness of civil liberties granted by the Indian Civil Rights Act created in 1968 to try and fluctuate and better bring the tribes into the system, to become responsible and adhere to the matters that are brought upon themselves through contracts and what-have-you off the reservation.

I have worked with law enforcement for the past 13 years, quit working there, went into tribal court work, addressed matters that I thought were being overlooked from a perspective view of being a law enforcement officer, feeling that with my background, my interest in working in law enforcement, carrying it over into the court system may bring a broader view of what the police department needs from the courts. However, when I look back, there is an animosity created by the lack of communications among each and every tribal court, county, and city attorney. The animosity is derived from the fact that you have one individual reluctant to take one position not having any knowledge of what the other department is trying to circumvent or convey. These matters, however, are not being addressed in the bill. Testimony given here today may help you to bring these matters about and shed some light on the fact that if some legislation is to be passed, now and in the future, that you bring yourself and your office and your aides to the Crow Reservation, the reservations throughout the State of Montana; sit down with the tribe, the county attorney, the city official forefathers or wherever, and see if these matters are actually a problem. Because, as I see now, you have been to the Crow Reservation, you have talked to our elders and they are very heart warmed about you coming and talking to them. They feel that they have a friend in Congress, whether it be the Senate or the House. Marlenee has also been to the reservation. People feel warm-hearted about the fact that he did express the right to come down, converse with them, ask them what their problems were, and explain his position as Congressman for the eastern district of Montana.

However, at this point, you have brought this bill back after 5 years of silence, for whatever reason—it is beyond us. I feel that it would be a great help if you would come and converse with us and any other tribe that is here today, to sit and discuss and maybe come up with some new ideas which would better benefit the tribes in the State of Montana—being there are seven tribes, probably the largest population of Indian tribes in one State. Senator, I feel that your bill having been re-addressed has been brought up for reasons not known to us, which would be conveyed to us at that time.

At this time, I would like to conclude my testimony and ask that you consider my invitation and that at the utmost time of conven-

ience to yourself, your office, you could make that trip to the Crow Reservation. We would be very appreciative to have you accept our invitation. It would be an honor to sit and discuss matters further. Thank you.

Senator MELCHER. Did you say you believe there should be some points raised concerning habeas corpus and a number of other——

Mr. HOWE. Habeas corpus, arrest warrants, search and seizures, search warrants to be issued at all hours of the day and night. These are problems that law enforcement is going to be involved with. If—if, I say, this matter should be addressed, and we feel that these are matters which need to be addressed.

Senator MELCHER Are these current problems now?

Mr. HOWE. Yes; I guess you would say they are current problems. But as for law enforcement, now being the Bureau of Indian Affairs, they seem not to have any problems of search warrants or anything from the tribal courts. But the fact is, if the bill is going to be introduced, these matters should be looked into and be present in your bill. It does state that however you are doing the magistrate, he himself, should he be appointed after the bill, should have been accepted and passed in both houses. He would have a choice of either living on or near the Indian reservation. Now that, I think, would create a problem. That does not necessarily say he has to be within a certain radius. He could be living in Billings, which would still bring a problem to the matter that you are trying to address here, as to the U.S. attorney being 50 miles away from the nearest Indian reservation where crimes are being committed.

I believe that if this matter is brought up and should be addressed, it should be stipulated clearly that any magistrate and any prosecuting attorney practicing before the magistrate court be located right within the heart of the reservation, where you have mentioned the problem exists.

Senator MELCHER. Naturally we have to write law to be passed by Congress, that is for all the various Indian reservations and all the various States where there are Indian reservations. We do not pretend to know all those circumstances. We believe that anybody appointed by the President, confirmed by the Senate, and working with the Federal court is going to be a responsible individual who will carry out the intent of the legislation which says that the magistrate will live on the reservation or someplace reasonably adjacent thereto.

I do not know the situation, whether it is Navajo country in Arizona or New Mexico or Utah, I do not know. I am not trying to prejudge all those matters. And there are a lot of other reservations where I simply would not, nor would one or two Members of Congress be able to pinpoint the right language to make it proper. Wolf Point, for instance, is within the exterior boundaries of the reservation, but I do not believe Wolf Point is reservation land. Am I correct on that or not?

A VOICE FROM AUDIENCE. Part of it is, John. The courthouse is on reservation land.

Senator MELCHER. Most people in Wolf Point, while it is within the exterior boundaries, it is not within the reservation.

Mr. HOWE. But the fact arises, non-Indian and Indian communities have a problem on the reservation, and should not that be addressed and that person be put directly in the heart of the problem so that he may witness the problem. You people come back saying, we cannot witness everything, we do not know everything, but we are trying to address problems that are being conveyed to our offices through whatever communications. The only way that we receive communications in this matter is through the Billings Gazette and the Hardin Tribune. That is the way we received the information that this hearing was going to be held. It is time we addressed this matter, because the problem has not ceased or become less—these are matters of communication we are having. We are having to travel various miles to get to areas that we feel are inadequate for us as tribes.

We cannot all gather together and come forth and give testimony at hearings on these matters. Therefore, I am extending to your office, you personally, and your aides to come to the Crow Indian Reservation, sit down with the Crow Tribal Council members, the Crow Tribal members who are presently working within the judicial system, the law enforcement agency, which is being headed by the Bureau of Indian Affairs, the county attorney's office, and the city and county officials, and try to see how much we have gained and grown since the last hearing.

Mr. Joy has just mentioned that these matters were considered somewhat trivial in your office, but then, therefore, we felt that the Senator from the State of Montana representing us in the Senate felt that there was a problem. Then why not address this problem. Why not elect people that will sit down with us and work with us, so we can come to agreements where we might arrest some of the problems, alleviate the problem of having our Senator come back and say there is a problem with an Indian reservation and we want to address that problem.

We, as a tribe want to address the problems that have been brought to our attention through your office. Some of the matters that I am requesting at this time, is that if it is not too much of a burden, that you might find time throughout your time of travel to stop and converse with us and see the working relationship we have created since 1980.

Senator MELCHER. The next time I meet with the chairman of the Crow Tribe and members of the council, I will ask specifically, Alvin, that you be present.

Mr. HOWE. I am not Alvin, I am Kayle.

Senator MELCHER. I mean Kayle.

Mr. HOWE. Alvin is my uncle, he is working for Bill Joy.

Senator MELCHER. I will ask specifically that you be present so that you have that opportunity.

Mr. HOWE. Yes, I would appreciate that.

Senator MELCHER. We will sit down and you can join with us in the discussion.

Mr. HOWE. I would appreciate that.

Senator MELCHER. I met with Donald and members——

Mr. HOWE. Yes; Donald mentioned the fact that you had been there and that you had talked about different matters at that time. But none of this has been mentioned presently. The last meeting,

he claims, was during Crow fair when you sat at his camp for 3 hours, and you never mentioned that this matter was going to be brought up in the near future.

Senator MELCHER. I met with Donald, I believe, in October, and other members of the council and members of the tribe. We did not discuss law and order in that meeting, either, but we discussed the matters that he felt were important. And, Donald has had a copy of this bill for several weeks, and——

Mr. HOWE. I was under the impression that we were also going to receive copies, those who gave testimony at the last hearing, under Marlenee's auspices.

Senator MELCHER. I do not know that you are referring to.

Mr. HOWE. The copy of the testimony given by all the tribes and the people present. You know, on behalf of the tribe, we were told that we were going to get a copy of that hearing, or the hearing held in 1980.

Senator MELCHER. Yes; you w[illegible] provided—the tribe was provided—I do not know whether you have seen it, but it has been available, and it has been distributed to the tribes since that hearing was held in 1980.

Mr. HOWE. May we get a copy of your last hearing, 1980, before we leave today?

Senator MELCHER. Yes; you may have this one right here at the conclusion of this hearing. We will have it for you, sir.

Mr. HOWE. Thank you.

Senator MELCHER. Now is there another member of the Crow Tribe who would like to add some words of wisdom?

Mr. Kindness.

STATEMENT OF DALE KINDNESS, MEMBER, CROW TRIBE

Mr. KINDNESS. Thank you, Senator. I do not know if my words are going to be that wise, but nevertheless I thank you for the particular opportunity.

Well, I do not know really where to begin. There are so many places I would like to begin, but I guess I will start off by saying that in regards to the latest proposal here, I have only one reservation, and that is the Crow Reservation. I propose a couple of things here for your consideration, one of them being that the Crow Tribe be specifically excluded from this bill, or language included and certain language stricken to the effect that all Indian tribes have exclusive jurisdiction over all people and issues within their reservations.

There has been so many things that have happened wrongly to my tribe, as well as the other Indian tribes in this part of the country and the world. There has been so many wrongs. I want you to understand that the reason the Crows have continually, three times, come out against this magistrate bill is because we guard very zealously what elements we have remaining of our sovereignty and we feel this is an attempt to further strip or erode the jurisdiction and the sovereignty that we have in existence today.

I have a few examples to cite. I will start out by giving you a copy of page 9 of the latest edition of the Hardin Herald. Page 9 is an entire page devoted to a historic building in downtown Hardin.

It is the Becker Hotel, and it was constructed I believe in 1908, but you can keep that for your record and for your reference.

Basically, the story on the front page of the Hardin Herald states that in regard to the historical background of that building—being erected in 1908—the first thing that it had was a bar where they served, of course, alcoholic beverages. One of the things that brought this article to my attention to bring to your attention was the fact that Hardin, the ground upon which the city of Hardin is situated was a part of my reservation up until the year 1937. In 1937, Hardin was excluded from the Crow Indian Reservation. Yet, the Hardin Herald, by publishing this picture and that article, demonstrates one of the grave wrongs that was done to my people, and that is that the local people in the city of Hardin, primarily the non-Indians, because of their quest for money and so on and so forth—and I think I have to add, with all due respect, because of their racism and their quest to get and hoard what does not belong to them, my land and my resources, those people put together that building there, and they had a bar in 1908.

Yet Federal law prohibited the sale or the possession of any alcoholic beverage within Indian country in 1908. And in 1937, when Hardin was finally removed from the Crow Indian Reservation, then at that point they could, under the Federal law, go ahead and sell their alcoholic beverages. But they got about a 30-year jump.

So this just goes to demonstrate one of the many things that is wrong that has happened to my people. I think that this should be resolved.

There are many other wrongs. Former Senator Graham there, approaching you, made the statement in 1981 that he could not understand why there were so many difficulties and problems being voiced by young Indians, by younger members of the tribe. And he said there—in effect, he said there are not that many problems that he is aware of.

He has lived on my reservation for many, many years, and he owns much land down there, and he leases a lot of land down there. His statement said to the effect that he has had a lot of good Indian friends. Some of his best friends are Indians, but you can realize what he means when he says that he leases—I do not know if he still does, but he leased many, many acres of prime agricultural irrigated land from older members of my tribe who could barely read or write. All they could do was sign their name. He leased that land from them for 10, 15, 20 cents an acres. You know the going rate, you are probably aware of that yourself.

So that says a lot about the wrongs that have been done to my people—economic gain, greed, corruption, and I say with somewhat respect, racism.

In 1937, Hardin was removed from the Crow Indian Reservation and the Crow Tribe of Indians did not get one red, brown, white, black or green penny for that land that was taken away from us, and we still have not today. There are many other wrongs that have happened to us, and who knows better what is wrong and what the problems are that we have to face and deal with, who knows better than the Indian people themselves? And so I would like to also extend that invitation that Kayle just extended to you, come down and talk to the Indians and talk to the Crows, talk to

the other Indian people, get a dialog going with the Indians, find out what the problems are, find out what their ideas are, find out what their proposed solutions are, and I think you will be off on a better, more correct stance, Senator Melcher.

In regard to some of the discussion and questions that were raised earlier as to whether or not you felt there should be an appeals system from decisions of tribal courts, that is an issue that I would like to address. However, you know, I would reserve my right to get that into the record at a later date when I have had more time to fully digest it. I would like to contact all other Indian reservations in this part of the country and see what there feelings are with regard to an appellate structure, once their court makes a final determination on a case, and then should the parties wish to appeal that.

One idea I had heard mentioned was, have a court system, an appellate level composed of judges from the various Indian tribes, qualified judges from the various Indian reservations sit on that final court of appeals.

Also, I cannot help but sit back and listen to some of the testimony that was given by some of the county officials, commissioners who live on or adjacent to Indian reservations, making statements such that the U.S. Government has encouraged a melting pot in this country, except when it comes to dealing with the Indians, then the policy is more of a segregationist policy.

James Nelson got up here and made the statement to the effect that reservations are a haven for hoodlums and criminals. Another man got up, Fred Johnson, and said take all cases to the U.S. magistrate court. And I think basically, what these people want is to abolish the Indian reservations. Regardless of what he says, we know, we can see it coming, we can see the light in the forest and we know what a sham is when we see it.

The bottom line, what these people want is to abolish our Indian reservation, get rid of our government, take over our natural resources and drink every drop of water that we have or do whatever they want to do with it, because that is basically what they want. They want to abolish the Indian reservations, destroy our government and take over and call us first-class citizens. I think that is a little stupid on their part. As long as we are alive and as long as we retain our heritage and culture, our skin will never be the same color as yours.

That is the way it is. Thank you. Any questions?

Senator MELCHER. No; I do not have any. We will put this copy of the Hardin Herald in our files. And, yes; you may submit additional statements concerning the points you have raised. I think you specifically mentioned the appellate procedure.

Mr. KINDNESS. Thank you for your time and attention, Senator Melcher, and I hope you do not take it too wrong, but, you know, we feel that based on our interpretation, this is going to be an infringement on our jurisdiction, and we like to guard those things very zealously.

Senator MELCHER. I do not see Earl Old Person. We called for him earlier. I do not see him present. Is someone here to testify for Earl from the Blackfeet Tribe? If not, we will go to Luella Roller, president of All Citizens Equal, from Dayton, MT.

Ms. ROLLER. My colleague, Mr. Jack Rupe, is going to speak first.

STATEMENT OF JACK RUPE, MEMBER, ALL CITIZENS EQUAL AND FARMER FROM THE MOIESE VALLEY

Mr. RUPE. My name is Jack Rupe and I am a farmer from the Moiese Valley, western Montana, and a member of a group called All Citizens Equal.

We of All Citizens Equal have reviewed your bill, S. 3092, and wish hereby to indicate our opposition to its intent and to the mechanism proposed to implement that intent. The title of "Chapter 44, Indian Reservation Special Magistrates," is in itself sufficient to indicate that once again the Congress is being asked to provide some new special right dictated by racial background.

In our view, this is impossible without simultaneously infringing the rights of another group of citizens. In view of our constitutional dictate that all citizens are equal under the law, such acts must be considered unconstitutional.

Further, in view of the current law of the land, which states that no person shall be discriminated against because of race, this bill seems unlawful. If the U.S. Congress deprives us of our constitutional rights and promotes racial discrimination, to whom are we expected to turn for protection? For these reasons, we find this bill fatally flawed.

In addition to the basic objections cited above, we have great difficulty in accepting the mechanism proposed to improve jurisdiction over U.S. citizens who happen to live on or near public lands currently and formerly reserved for the use of Indians. Your proposal would introduce serious conflicts with Public Law 83-280, which you mentioned previously, which is already in place, and mandates criminal and civil jurisdiction by the States over all citizens within 6 States, plus various limited forms of jurisdiction within 10 option States. These states include nearly a third of the country.

Surely the experience provided by the judicial system of those counties and States has shown that all citizens can receive fair and equitable treatment under the law regardless of race, color or creed.

If the real desire of Congress is to halt the growing polarization of racial groups within this country, then it is time to begin to treat all citizens equally. Attempts to force non-Indians—which itself is a racially discriminatory policy—into tribal courts run exclusively by Indians is certainly a giant step backward in honest efforts to eliminate racial bias.

One final observation relative to the cost of this proposal: If one assumes there would be one magistrate only for each reservation—even though the bill allows more than one—then a very rough estimate of salaries required for magistrates, secretaries, and law clerks with associated expenses for office space, office equipment, a law library and miscellaneous expenses, discloses that the bill to provide this program to the seven Montana reservations would be on the order of $750,000, or $100,000 per year per reservation. If similar costs were incurred for the other 340 or thereabouts reser-

vations in the United States, this bill could approach $30 million per year.

This would admittedly be a great windfall for lawyers, judges, and staff, but this bill's proposal to appropriate new moneys "in such sums as may be necessary" seems completely contrary to Congress' current efforts to reduce the deficit.

Senator MELCHER. Is your home Ronan?

Mr. RUPE. Sixteen miles west.

Senator MELCHER. Of Ronan?

Mr. RUPE. Right, essentially southwest.

Senator MELCHER. And about 90 percent of the population is non-Indian?

Mr. RUPE. Of Lake County?

Mrs. ROLLER. Eighty-seven percent.

Senator MELCHER. Does Lake County have a cooperative agreement with the tribe?

Mrs. ROLLER. Yes, they have.

Mr. RUPE. It is my understanding that they do.

Senator MELCHER. And you are perfectly satisfied with that, but you would recommend Public Law 280?

Mr. RUPE. Yes.

Senator MELCHER. Have you ever recommended to the State Legislature of Montana to petition for 280?

Mr. RUPE. No.

Senator MELCHER. As a matter of fact, there is not any law and order problem where you live, is there?

Mr. RUPE. Not yet.

Senator MELCHER. You hope not.

Mr. RUPE. I hope not.

Senator MELCHER. Thank you.

STATEMENT OF LUELLA ROLLER, PRESIDENT, ALL CITIZENS EQUAL, DAYTON, MT

Mrs. ROLLER. I am Luella Roller, and we do appreciate being invited to this hearing.

I have lived on the Flathead Indian Reservation since 1938, and part of that time I have lived on the Fort Peck Indian Reservation. The majority of the citizens seem to feel that the present system of cooperation between tribal officials and States, county, and U.S. Government seems to work satisfactorily on our reservation, and that law enforcement is carried out in the proper manner. Now, I got my information from the sheriff's office in Lake County, and I lived very close to Elmo, about 3 miles, which is the headquarters of the Kootenai Tribe on that reservation, and they feel that the deputy takes care of their problems. They admire him and respect him.

Seems to me that the thing that I learned at this meeting is that we need to talk more and more between the two of us, I mean the tribe and nontribal members. We did not used to have as much trouble as we do now, and I do not know why, but it may be because there are more people coming into the reservation who do not understand the background. But if we do not settle our problems here and now on reservations, we are going to hand those

problems on to our children and our grandchildren. And like it has been during my lifetime of 75 years, problems are going to get worse, and we must do something about it right now.

As one of the speakers suggested, we have to have more communication. Washington, DC is a long way away, and I find that when the new people on our part of the reservation move in, they do not understand. They have not lived here long enough, and the things that they suggest do not work.

But the sheriff's department thinks that on some reservations this bill might work but not on our Indian reservation. I hope there are other people that live on the reservation here that will testify. Thank you.

Senator MELCHER. Well, I appreciate your testimony, Luella. The fact is that you have Public Law 280 on the Flathead, and that seems to be satisfactory, but I think you can judge from the testimony you heard today that Public Law 280 is not going to be operated on other reservations, and that under no circumstances would Public Law 280 be repealed by this bill, or I do not believe any other bill. So where Public Law 280 applies, that is it.

Mrs. ROLLER. Pardon me, but it seems to me there is nothing in your bill that guarantees us on the Flathead Indian Reservation that we can go along as we are. Is there?

Senator MELCHER. To the contrary, the bill is very clear. It does not repeal, does not alter Public Law 280 at all. It does not touch it. Public Law 280 has not been applied to the other reservations in Montana at any time, has it? Only to the Flathead? You, yourself, said that 87 percent of the population on the Flathead Reservation is non-Indian. We are not trying to change your situation, but I understand your group, ACE, has an interest in Indian problems, and that is why the invitation to testify was extended to you, not particularly because you lived on the Flathead or because you lived on a reservation where Public Law 280 applies, but for the fact that your organization has an interest in issues that do affect Indians. That is why you were invited to attend.

We are not trying to change anything on a Public Law 280 State, or Public Law 280 reservation.

Mrs. ROLLER. I think, just to show the feeling between the Indian and non-Indian on the Flathead Reservation, at least a great majority of them, there is a tribal member that we elected as a justice in the Supreme Court of the State of Montana. He could not have been elected without almost unamimous non-Indian vote. It was not the Indian vote that put him in, it was the non-Indians. We are very proud of him.

Senator MELCHER. Yes, I know him very well. We are not trying to deal with everything that ACE is trying to deal with. You were invited to testify as an officer because of ACE's general interest in the Indian problems, so——

Mrs. ROLLER. We have the feeling that unless Congress does something to settle it, that Washington, DC, is running Montana and does not understand the problems of anybody on the reservation. They are too far away. I did not mean the Representatives from Montana. You understand, but the Indian Department in Washington.

Senator MELCHER. Well, this is one of the problems that exists on some reservations. You have heard the testimony, and we are trying to bring some ideas of Montanans to Washington on what should be done about that problem on reservations. Your Flathead Reservation does not have problem, as you have testified with law and order procedure, and we are not trying to make one there. I am glad there is no problem and glad that Public Law 280 has worked out there. I certainly hope that continues.

Mrs. ROLLER. They think that if it were changed it would make a problem.

Senator MELCHER. I see no reason for it to change at all.

Mrs. ROLLER. Thank you.

Senator MELCHER. Thank you very much. I think our last witness on this list is State Senator Carroll Graham. Do you want a break? If that is all right, we will take a 10-minute break.

[Recess taken.]

Senator MELCHER. I am sorry that we have delayed this long, but now we will get back into the testimony. We will hear next from Carroll Graham, State senator from Big Horn County and long-time public servant for people in Big Horn County and also for people throughout Montana.

STATEMENT OF CARROLL GRAHAM, STATE SENATOR, MONTANA STATE LEGISLATURE, REPRESENTING BIG HORN COUNTY, MT

Mr. GRAHAM. Thank you, Senator Melcher. I am happy to be here and to appear on your proposed legislation.

First of all, this is a matter of record and I would like to set two things straight before we get into the bill. First, you asked me if I had seen the U.S. attorney down there, and my answer was no. I did not say that he had never been down there, because I do not know. But, I never did see him down there myself. I am down there frequently, but he could have been there.

The other is the statement that was made a while ago that I own thousands of acres of land within the Crow Reservation and I lease thousands of acres of land. I am not in violation of section 2. I do not own over 1,925 acres of land. I do not lease thousands of acres of land. Actually, I am a very small operator. So I wanted to set the record straight, and it is a matter of record.

I think that certainly in S. 3092 you have something that I think there is a crying need for. I think the reason that originally, when it was started several years ago, maybe 1979 or 1980—I can not remember exactly when—we had some problems then, and I never pushed on this type of legislation because I heard the same story I have heard today from some of the people who testified. That is that given time it is going to get better and it will straighten itself out. I do not now how many years that we are going to have to wait for it to straighten itself out.

The fact is, I believe, that the law and order system in my county down there has gotten worse. I am going to give three quick examples of what has happened, and so far the disposition of the cases, one of them that you are surely aware of and the other two, maybe you do not know.

What disturbs many of us down there—and some of the Indians, because they talk to me about it—is what I commonly call the computer case. The tribe came and picked up those computers, pitched them in the back of a truck, many of them brand new, still crated, and hauled them off because the Crow court had decided that we owed them on this Leroy Sage, a Crow Indian boy, and another Crow Indian boy of course ran over him. We had no jurisdiction to keep the boy in the school yard or in the classroom. In fact, the teacher tried to, and he told us we had no jurisdiction over him, and we knew that. He did leave the classroom. We had no jurisdiction to run the boy off that was on the school grounds with the motorcycle and he eventually did run over and break the leg of Leroy Sage.

If we could have, we would have done something about it, but we did not do anything about it. And, consequently, the tribe, through their attorneys, sued the school district for $150,000.

Well, of course, as you well know, and not going into any further detail, the case is now going to be before the Supreme Court. I think that is good. It is too bad it had to go like that, and we do not know what the outcome will be. I am glad it is before the court. Maybe it will settle some of the questions that we have currently been talking about.

You very seldom ever get a clear concise thing from a court. They stop just short of getting into what is a complete answer. However, they will make a decision on this, I am sure, but maybe it is not the answer of who has the jurisdiction.

Jurisdiction is the big question today. There was a deputy sheriff sent down by the sheriff immediately when we found they were going to take the computers. The people from Crow ordered them to unlock the doors under a threat that if they did not, something horrible would happen to them. Well, you know, they did unlock the door. There were BIA police there overseeing the operation with their weapons on their hips. So we did unlock them, and they took the computers out and threw them in the back of a truck, and they are supposedly stored someplace.

We asked the sheriff why, when it was on State ground, why he did not do something to stop this action. He will tell you anytime that you get into any kind of action that he has no jurisdiction within the original boundaries of that reservation.

So where does that leave the people who live there? We have no protection, really, because he says he has no jurisdiction. I do not know whether he does or does not, but he says he does not. We took that case to the U.S. attorney's office and finally got a hold of somebody, a Mr. Dunbar. We took that case there and we are trying desperately to get the computers back. It was just before school. There are 86 percent Indian students in the Lodge Grass School, and this computer was for the computer program to train the Indian children.

I said 86 percent of those children are Indian children. They have been ordered to bring those computers back. To this day, their lawyer advises them not to bring them back. I am sure he is in contempt of court. Federal Judge Battin ordered them brought back so that we could start a computer program. Being into the school year as far as we are, it has not been done yet.

Nobody seems to have the jurisdiction to do anything about it, and I think something has to be done, I do not believe that this is the complete answer, but I think it will sure help a lot of things. Trying to get something done, you can go and file a complaint and it does not go anyplace.

Very recently, a county commissioner down there was out viewing the road, completing a new gravel road job, and he was out there viewing the road, which is necessary to see that the project is finished. One of the Crow Indians came to him, stopped him on the road, on the county road, and asked him why in the hell he did not get up there and gravel his road into his house. The commissioner explained, "We are not allowed to do that by law. In the first place, we do not have the money. In the second place, it is against the law to gravel private road."

The fellow knocked him down. He weighed about 300 pounds and the county commissioner is smaller than I am. He got up and he was immediately knocked down again and jumped in the middle of and almost beat to death.

He filed with the sheriff down in Big Horn County, and of course as I was saying, they have no jurisdiction. The FBI man happened to be there. He took all the depositions, and they ruled that under some circumstances they can not touch it.

He also filed with the police department in Crow, but today, nothing has ever been done and nothing will ever be done. And this guy, from the beating, is in very poor health and may have to resign his job.

He said—I just talked to him before I got up here, and I said, "What is going to happen?" And he said, "Nothing, I guess."

This is the type of law and order that we have been subjected to. I pay my taxes to the county down there for law and order, and so do other county people, but they have none. I have none. When you have eliminated the sheriff—it is out of his hands. He can not do anything because he lacks jurisdiction. Then, where is your law and order? If you call the Crow police, you do not get much response.

I could go on. I could write you a book that thick on what has gone on, and nothing has happened.

I am not going to get into it; time will not permit, but it is available and I will be glad to furnish you a million cases and you can check the records to find out how many prosecutions there were. So, maybe their system is working good and maybe it is not.

I have been in hopes, and as I said, I never pushed this bill to get you to do something about it, but I think that in reviewing what we have seen at this point, something has to be done, because eventually, I am afraid there will be violence.

So, I think your step is certainly in the right direction. I do not think it is the whole answer. Until we all come under the same law and order, I think we are going to continue to have the problem. I think this is going to help, because I think we have a way, maybe, to try to get this thing done, to get some law and order or semblance of it. I don't know what this will do.

A magistrate, as I understand the bill, could order the sheriff to go out and do something. I do not know how cumbersome that process will be.

When we knew that these computers were going to be taken, we could not do anything. We requested that the sheriff be there. He did send his deputy and he was there. He watched them take them and load them on the truck under the protection of the BIA police. So something is really wrong. I think we can not afford to sit and wait any longer to get something going.

Nothing would please me better than if they really had a good qualified court system and we could go there and at least get a good fair hearing, or that they would not go into something like it went into here because they thought that they took the matter into their own hands. I think it was illegal to do it. I do not think it was right. Many of these things go on continuously and we are disturbed about it. We should be. The Indians should be disturbed. Their children are being deprived of a computer education this year because the tribe went in there and confiscated those computers.

I do not know whether they will be any good when we get them back.

Senator MELCHER. Let me go into this just a little bit.

The Lodge Grass School District is an independent school district entirely on the reservation; is that correct?

Mr. GRAHAM. Absolutely. The physical plant, though, is not sitting on tribal grounds or Indian grounds. It probably was once Indian grounds, but it is private ground.

Senator MELCHER. How many members are there on the school board?

Mr. GRAHAM. Seven, I believe. My boy happens to be the vice chairman of the board. He has been chairman of it, so I really know what I am talking about.

Senator MELCHER. Your son is a vice chairman?

Mr. GRAHAM. Right, as of now.

Senator MELCHER. And are the other members tribal members?

Mr. GRAHAM. Some of them are tribal members; yes.

Senator MELCHER. Are the majority tribal members?

Mr. GRAHAM. Yes; they are.

Senator MELCHER. The majority of the school board is tribal members?

Mr. GRAHAM. That is right. And, I might add, they have been very good to work with, Gary says. I don't sit in on the school board meetings, but he says they are good to work with. They did not agree with this thing that the tribal people did.

Senator MELCHER. Well, just on this one point, when the school board refused to give up the computers, or tried to refuse, did they ask the BIA police officers to protect that school property?

Mr. GRAHAM. Yes, they did; but they said that they were not there for that purpose. They were there to prevent any violence.

Senator MELCHER. The BIA police officers?

Mr. GRAHAM. Right.

Senator MELCHER. So, in other words, the BIA police officers followed the orders of the tribal court?

Mr. GRAHAM. That is right.

Senator MELCHER. So you really have the conflict between the tribal court and the school district?

Mr. GRAHAM. That is right.

Senator MELCHER. Or the school board specifically?

Mr. GRAHAM. The tribal court sued. I mean, it is a long story and I'm not going to try to get into it. I am sure you are aware of much of it. Those types of things are bad. Now, I have told you about the county commissioner. Nothing will ever come of that. I just inquired before I left down there.

We had another case very recently of some people who got this man's big four-wheel-drive tractor. They took a car; it wasn't their car; it was the car of a friend, and the friend was in jail. They took it out driving and they drove this big four-wheel-drive tractor right up on top of this car and smashed it. Of course, they knew who did it, and there was an investigation of it. The vandals tried to back the tractor off and it had a big set of drills on behind it. Of course, the drills were in the ground. They sprung the drills all to pieces, and finally the tractor died. Then they got mad because they could not get it back off the car, and they cut all the hydraulic hoses and fan belts, and punctured the tires.

Nothing, nothing comes of these cases. And they know who did it. They investigated it. These are things that we are disturbed about. These are things that if the court down there were working like it should, and this was in the confines of the reservation, then they would do something about this.

But when you sweep it under the rug—I sometimes feel mad at judges down there, or at the police officers and the judges, because many times they just say, "Well, what is the use of bringing this guy in? It will be just thrown out of court."

I feel sorry for those police officers sometimes. They lose hard. When they know a culprit should be brought in and something should be done with him—when you have that kind of evidence, why isn't something done? We in the State have attempted to sit down and talk about this, and I have been one of the prime sponsors of the bill every year to set up a special Indian affairs committee to meet with these people. We first tried meeting in Billings with these people to sit down and talk our problems over. We were not very successful. And, I might say, you have some Indian people on the committee.

So the next year, we said that did not work and sent them to sit down and talk to people about some of these problems, law and order and so on. So then the next time I said, well, let's change this thing and meet on the reservations if they will meet with them, sit down and talk about these things. Well, that did not work very much better.

So I wonder, how do you do it? Do you know? You must start someplace. As I said, I never pushed this bill to start with. I thought there was nothing wrong with it, but I never pushed it because I had confidence that we were going to get this court system set up down there so it would operate. I am doubtful now. Under the system that has been set up, I do not think they ever will.

I was in Washington, DC last spring, and I spent some time there over another matter. I was down in the Department of the Interior building. There was a little document about this big on display—I cannot even remember now when it was written—but it was the first time that the Indians had asked that they be allowed to have their own police officers and take care of their own little minor

crimes, such as drunkenness, petty larceny, and things of this nature, small crimes. I could not see any harm in that. I think that was good and Congress permitted it. But look what has happened since then.

You talk about the recognized court, well, maybe they are. I do not know. But, we do not have any say in the court system down there, none whatsoever. They do in our court system, and I think it is kind of a shame that we do not have, so that we could try to put together a good court system for them. But, I do not know if it will ever go.

There is a crying need for something to be done. If something is not done, I am afraid that the thing is going to continually get worse.

If you knew that you were not going to have anything happen to you whatever you did, whether you butchered a bunch of cows for a man, which happened—that is another case just this fall—would you be afraid to pull any of those crimes; if you knew that you would not get a jail sentence or have to make restitution? There is no deterrent to stop anybody from doing that.

I do not know whether Congress created all this havoc with this law and order system that we finally evolved into, the jurisdictional dispute, where the sheriff says he does not have any jurisdiction. The *Oliphant* case said they had no jurisdiction; still, they maintain they do. So there are a lot of questions to be answered, and certainly we cannot do it. Congress has that power over the Indians, you well know, and Congress, if there are such laws, has created them. Congress is the one that is going to have to try to straighten it out.

I think you have made an attempt here. I do not think it is the answer, but I think it sure will be a big help. Maybe we will have to take this a step at a time. I am not sure to advocate, as some said, doing away with the reservation. I think they are fine. Although, I might say at this point any land that I do own or that I was invited to buy by the Federal Government at sales, when they had sales or supervised sales, it was not as if I went in there with a gun and pushed this Indian off his allotment. He sold it to me.

Today, down in Crow Agency there, there are a stack of applications that tall that the Indians put in to sell their land, applications to get the patent so they can—I do not know whether they want to sell it, or whether they want to borrow money on it. It is not any of my business what they want. But we have not pushed those people off of their land. We have been invited to purchase this land if they want to sell it.

I would be glad to sell my land back to the Indians if they find somebody who wants to buy it. I would be glad to let them have it again, because I do not like to live in a place where there is not any law and order.

I think you are on the right track. I am going to hand it to you.

I have some questions that we carefully went over on this bill, and possibly you might want to consider some changes in different parts of it.

You can look at it, and if your legal adviser feels that it needs revising, why, fine. I do have this written out for you, Senator Melcher.

Let us get back to one more thing—talking about cross-deputization. I was on the task force of Indian Affairs. I have been chairman of it and still am. My term will expire the 6th of January, the same time as my term runs out in the State senate. I think that we have done a good deal. We have allowed, under certain conditions—the sheriff cannot do this by himself—nor can the tribe by themselves. The commissioners have to approve this action. If they are going into cross-deputization—the BIA or the Indian police must have a bond if they are going into this type of thing, so that if one of their officers acts improperly, that somebody is going to be responsible for it, and the same as we are if we do something. We have to carry insurance or a bond, the counties themselves.

So it can be done and it has. When you finalize this agreement, it all has to go to the Attorney General for the people. The Indian people have to go to the Secretary of the Interior for approval.

This term can be only 6 months. Either the Indian or the county can terminate this agreement. I mean, they can terminate it at the end of 6 months or it could go on for 5 years and renew it. If it works, fine, I am sure they will do it.

The problem is the jurisdiction. Who is going to take care of these problems? Who is going to make the arrests when there needs to be an arrest made? I am disturbed because I live there, and 50 percent, or maybe more, of that land is owned by non-Indians. The population is about the same, 50 percent. But, I am disturbed that I have nobody to turn to if a crime is committed. I am disturbed that nobody has any jurisdiction to do anything and will do nothing. I do not know whether it is a fact that the sheriff has no jurisdiction. I do not care if it is on my deeded ground, which I believe is as good as a piece of ground in Virginia down there. I do not consider it part of the reservation. It is within the boundaries of the reservation, but I believe it has as good a title to it as you can get anyplace, because it was signed, some of it, by the President of the United States.

So, I am wondering why we should have to live under those conditions. I am wondering why the tribe could have the power to come and take those computers, even away from their own children, to satisfy something that we had no jurisdiction over. We could not keep that child in that room; the teacher tried. We could not run that boy with that motorcycle off the playground. We have no jurisdiction.

What are you going to do? If you cannot get a law that you can work with and hold somebody responsible to do something when something like that is committed, you do not have any law and order. That is very bad. It goes a lot further than picking up a few drunks off the road or whatever, so I think you are headed in the right direction. I do not know whether you can get this through Congress. If the rest of your colleagues back there really knew the true story you would have no trouble getting a bill like this through Congress.

I am not blaming the Indian people. Somebody testified here that it is part of their culture, the way they handle a certain amount of these things. Well, you know, we are living in a new world today and different problems arise. We all believe in law and order, and I believe that the Indians do, too. But it is a problem of how they

handle it and what they do about it. I think this will go a long ways toward solving some of the problems. It never will be the complete answer till we all are under the same law and order.

You see, every one of these guys, the Indians, when they leave the reservation and even go into Hardin, MT, they come under another jurisdiction. They do not seem to have any problem with that. They get along just fine. I do not believe that many of them will tell you they were ever mistreated.

We have had them on our juries. They are on the jury list, and we try to have them on our juries when we have district court or justice of peace court. They are able to sit on those juries when they wish. They are called, but lots of them decline. It is pretty tough if they do not want to sit on a jury to get them to sit there. They can hold me in contempt if I refuse, unless I have a good excuse, but what do you do if they do not want to serve?

So there are problems, and I think you are on the right track. I think it would help a lot. As I said, I do not know whether you can convince your colleagues of that. I will be glad at any time to work with you. I am glad to work with the Indians. Mr. Kindness made a lot of statements there, and some of them were true and some of them were not. I do have a world of friends among the Indians, that is true. Some of the other things about the amount of land and stuff I own is not true.

So with that, Senator Melcher, thank you for coming out here, taking your valuable time. I know Congress is coming back in today, is that not right?

Senator MELCHER. Just for the swearing in of the new Members.

Mr. GRAHAM. You knew you could miss that, because you have seen a few of those.

Senator MELCHER. Yes, I have seen a few of those.

Mr. GRAHAM. I am going to be in Helena, MT, on Monday to watch the swearing in of my new colleagues in the State senate, and I have nothing but the best to say about the new Senator from my district. He has been my neighbor for many years, and I think that he will be a valuable asset. You may be even happier with him than you were with me. Thank you.

Senator MELCHER. Well, thank you, Carroll. Who is your successor, Bill Yellow Tail?

Mr. GRAHAM. Bill Yellow Tail, very fine guy, well educated, and I think, very fair.

Senator MELCHER. I think he's about 35 years old; is that right?

Mr. GRAHAM. He has enough age and he could last 24 years, just like I did.

Senator MELCHER. I was going to say if he can serve there 20, 25 years as you have, and be a constructive force in the Montana Senate, we will all be better off.

Mr. GRAHAM. He has my blessing. I told him I would work with him any way that I could to help him along. In fact, nearly every single Indian bill in the Senate for 24 years has successfully gotten passed. I could go through a whole list of them. They were part of my constituents, too, you know, and that has been good. I like the Indians and I like to work with them, but I think somewhere or other we have gone a little bit astray on the jurisdiction question.

Senator MELCHER. Thank you, Carroll.

Dennis DeVries of Polson.

STATEMENT OF DENNIS DeVRIES, RESIDENT, POLSON, MT

Mr. DEVRIES. Thank you, Senator Melcher, for giving me the opportunity to speak. I have a few brief comments.

I am in favor of your bill generally, but I have some concerns as were brought up before in section 652, in the jurisdiction and powers. We talked about it earlier this morning. It appears to me that the magistrate will be given powers to extend authority by the district court in which he serves, and it is our counsel's opinion that the district court, of course, could not give any powers away that it did not have. All this discussion today assumed that the magistrate would have a broad range of powers, including civil cases and criminal cases. It is our opinion that unless it is specifically mentioned in the bill, unless it is clarified here, he will not have any more powers than a district judge would have.

Now, my concern here is that it falls short. It falls short in civil cases relating to contractual law, which I am interested in as a banker. Now, if I, as a banker, make a loan to a tribal member, the State has no jurisdiction. I am not permitted into a district of Federal court. My only recourse, of course, would be to a tribal court system, and as good as they are, they are not equal to State and Federal courts.

So we feel that your bill is good as proposed, if we could broaden the powers, give the magistrate powers over civil cases especially relating to contractual law.

Senator MELCHER. I think you have interpreted it correctly. This does not get into credit, contractual law but perhaps it should.

Mr. DEVRIES. I do not believe it would get into a lot of civil cases that were mentioned here today.

Senator MELCHER. Only to the extent that the Federal court would have jurisdiction.

Mr. DEVRIES. Right.

Senator MELCHER. I guess we will have to read this ruling of the Supreme Court, but we have talked a lot about the Lodge Grass School District and the computers. We are not even sure at this point what the jurisdiction over that will be. If this bill is enacted at all, I guess we will have to look at that very carefully after the Supreme Court rules on that case sometime before spring. Is it fair to say that?

Mr. GRAHAM. It is tentatively set in March.

Senator MELCHER. The arguments are in March, and they ought to rule on it before they break up for summer. I do not think we are sure that if this were law now that the magistrate could have assumed jurisdiction over the argument of that tort case. But, we would hope it would.

I say that as the author. I hope that if this were law, that the magistrate would have had jurisdiction over that. There is an argument between the Lodge Grass School District and the tribal court. Both are, of course, run by the Crows.

Now, not all of the membership of the school board are members of the tribe, but my understanding is that a majority are, and the chairman was, still is, a member of the tribe.

Mr. DEVRIES. Well, we feel it would be better to clarify it, and I do not know if you can or not.

Senator MELCHER. I do not know how far we could go into that, because when you get into contractual law, which is outside the jurisdiction of Federal courts now, because it is always referred to the State, we are into a new land, a new set of problems.

Mr. DEVRIES. They cannot give it away, but you may be able to provide it for them. I do not know.

Senator MELCHER. They might be able to. I'm glad you are testifying to that, and I hope a lot of other people will testify on it. I hope the tribe will testify on it, too. The tribes have the most to lose or gain by whatever the law is in that.

Mr. DEVRIES. I think that is true. We are mandated by law to provide equal credit opportunity. We do not have equal remedies, and I think a lot of case credit is denied because the remedies are not there. We have had statements from the Browning officers when the bank closed, and they felt that was one of the main reasons. Their moneys were slow and not there.

Senator MELCHER. Thank you very much, Dennis, for those comments.

Franklin "Randy" Perez of Fort Belknap.

STATEMENT OF FRANKLIN R. PEREZ, PRESIDENT, FORT BELKNAP INDIAN COMMUNITY

Mr. PEREZ. Senator Melcher, my name is Franklin Perez. I am president of Fort Belknap Indian Community. I would like to take this opportunity to thank you for the tribe of Fort Belknap to present their opinions on S. 3092.

There are several things in the bill which concerns not only Fort Belknap but other Indian tribes which go directly to undermining self-government and eroding the power of tribal courts. Some of the things that I want to talk about:

First, the jurisdiction and powers. Subsection (a)(1) indicates that; "All powers and duties conferred or imposed by U.S. commissioners."

It is our understanding that U.S. commissioners have been phased out by chapter 43, title 28 United States Code. So is that particular subsection (a)(1) conferring all the power and duties of chapter 43 upon the special magistrate?

Second, under subsection 2, there is reference to conditions of relief pursuant to Title 18 United States Code, subsection 3146, which would appear to further expand the jurisdiction of the magistrate over Indian country.

Third, pursuant to subsection 3, it is unclear as to the limitations of jurisdiction of the magistrate's court. It appears that the reference to Title 18 United States Code 3401(A) would allow the magistrate to exercise jurisdiction over minor offenses without any special designation from the U.S. district court. The question arises, does this apply to tribal law, or does it preempt existing tribal laws? The effect of such a provision would have far-reaching effect upon the erosion of tribal courts and the ability of the tribal governments to enact laws for the purpose of regulating conduct of In-

dians on Indian reservations, thereby causing a further erosion of tribal sovereignty and self-determination.

Further, this certainly would not clarify jurisdiction over non-Indians who commit crimes prohibited by tribal laws. Subsection B would also appear that it is an expansion of jurisdiction in both civil and criminal areas.

Essentially, subsection 652 of S. 3092 does not specifically designate who falls within the jurisdiction of the special magistrate. Criminal jurisdiction on Indian reservations is extremely complex under existing law, and this particular provision would further confuse the extent of Federal jurisdiction and Indian country.

Subsection 652 of the S. 3092 would also appear to be in conflict with Title 18 United States Code, subsection 1152, in that the General Crimes Act is not applicable and does not extend to offenses committed by one Indian against the person and property of another Indian nor to any offenses which may be left to the jurisdiction of the tribal government.

Fourth, subsection 653, remand of custody. No. 1 states that the special magistrate, in instances where he has determined there is no Federal jurisdiction over the offense, may direct that custody of the defendant be remanded to the appropriate law enforcement officials.

That particular provision is unclear with regard to which offenses may not be brought before the special magistrate. It would appear that the only offense which the special magistrate may not have jurisdiction over would be those enacted or custom tribal law.

In the case of an Indian, the tribal court would have jurisdiction. But assuming he is a non-Indian, who would be the appropriate law enforcement official in light of *Oliphant*? Unless the offense could be interpreted to fall within title 18 United States Code 3401, minor offenses, application probation laws.

An example would be a situation where you may have a religious site that tribal codified or customary law may prohibit an individual from approaching during certain times because of its religious significance. If a non-Indian who is rock hunting disturbs the area and takes certain artifacts from the religious site, there is no Federal enclave law nor is there a State law which would fall within the purview of the Assimilative Crimes Act. The question would be, who would prosecute the non-Indian for violating tribal law?

No. 5, subsection 654, practice and procedure. 1(a) this provision provides for the practice and procedures to be followed by the special magistrate, which also includes those provisions set forth in title 18 United States Code, subsection 3401, 3402, and title 28 United States Code 636(c). It is unclear as to the extent of civil jurisdiction which the special magistrate may exercise within Indian country.

Subsection 654 (d) of this particular provision is very distressing to tribes because of its far-reaching authority by State and Federal officers to execute any warrant for arrest, or warrant for search and seizure, or any other summons, subpoena, or order of the special magistrate which in effect would be having State law enforcement officers enforcing Federal law on Indian reservations.

The provision: "Acting within the geographic area in which they have jurisdiction under the laws of their respective govern-

ment, * * * * * " is unclear as to why that particular provision was placed within this section. It would seem to us that it would be sufficient to authorize the tribal police to enforce all laws falling within the purview of any statute of this nature.

It seems to us that there should be some perimeters established as to the extent of jurisdiction that may be vested in the special magistrate by district court. It must always be remembered that Indian reservations, although similar to Federal enclaves, are not like a State park. There are Indian tribes who reside upon Indian reservations who exercise internal sovereignty and self-government.

Senator, these are a few of the exceptions which the tribal government of the Fort Belknap Indian community take with regard to S. 3092. It is our opinion that the Senate bill would further confuse the already complex issues of criminal jurisdiction on Indian reservations.

The enactment of S. 3092 is not going to solve the problems on which you commented in the Congressional Record in 1979 with regard to problems on Indian reservations associated with law enforcement and prosecution of crimes on Indian reservations. It would seem to us that S. 3092 is an unwarranted intrusion and expansion of federal jurisdiction on Indian reservations designed to further erode tribal self-government of Indian tribes.

A more productive approach to solving the lack of prosecution by the U.S. attorney and law enforcement on Indian reservations is a comprehensive jurisdictional statute which would vest Indian tribes with criminal jurisdiction to the extent that it would rectify the problems created by the *Oliphant* decision.

Primarily, the existing Federal criminal law is in place but only needs to be enforced by the appropriate authorities. An alternative would be to vest the law enforcement and investigative authority over Federal crimes in Indian tribes, and at the same time increase the prosecutorial capability of the U.S. attorney's office.

The U.S. attorney's office in Montana appears to have on low priority the prosecution of crime on Indian reservations. The declinations received by the BIA special officer from the U.S. attorney's office would sustain that statement.

The primary problem under the existing system appears to be the lack of financial resources of the Federal Government and Indian tribes. The Congress needs to appropriate necessary funds in order to staff their investigative arm and provide funds to Indian tribes to enforce Federal law on Indian reservations. It should be pointed out that Indian tribes have the capability to investigate and enforce Federal law, as long as that authority is clearly spelled out and the necessary funds are provided to Indian tribes for that purpose.

Although there are some serious problems with S. 3092, we generally feel that it is a step in the right direction to the extent that hearings can be held to provide Indian tribes the opportunity to present input on legislation which could have an enormously detrimental effect upon tribal sovereignty. However, there are several alternatives to S. 3092 that the Senate Select Committee on Indian Affairs could explore with the input and assistance of Indian tribes.

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It is my opinion that the tribal court could handle a majority of all cases that occur on a reservation. Similar to the Crows that have testified here, the Fort Belknap court system does have, I feel, an adequate court system. Through the last 10 years they have taken a great step to handle cases on their particular reservation. The Indian people of Fort Belknap seem to be taken into court and also are found guilty or sent to the jails; the jails that are provided within the system that we have there.

The court system as it is set up now at Fort Belknap has a chief judge and also associate judges, but they have all the cases there, and they also have a format for an appellate system. From there on, I think it would be only a matter of Mr. Melcher and the tribes to determine if there would be also another system that would be higher than the appellate system to the tribal system as it is now. As far as I am concerned, the special officers within the exterior boundaries of the BIA could handle all the serious Federal cases for both Indian and non-Indian, if that was to be, and also be handled in the Federal system. I think the problem there is that the coordination between Mr. Dunbar's office and the offices there is handling the investigations and taking it into the Federal system.

Mr. Dunbar comes to Fort Belknap Reservation but only on campaigns when he wants to be elected by the people of Montana.

I do feel that the special officers have that capability, and we also have an officer that worked in the same system, in the Idaho system, and he was allowed to take those cases to Federal court, I do not see any reason why that could not be handled here in Montana.

I think we talked about the *Crow* case here, the computer case. My understanding now is that that was a default case. To me it seemed like a lack of respect for the tribal system and that those people had a recourse there, if they had only gone to court. The proceedings now, you know, are in the Supreme Court. It is too bad it has gone that far.

We had a similar case at Fort Belknap. It was called the *Williams* case. That was supposed to be tied together there. That case could easily have been handled in our court system. It was a case with a contractor on a housing project, an individual that continually weaseled his way out of contracts, and the housing authority of Fort Belknap was not sovereign or you know, we could be sued, and we sued Mr. Williams, but he took it into Federal court. And to me it could have been a minor thing and could have been easily handled in tribal court, except that, you know, Hatfield had it here. It spent 3 or 4 days here. It went to ninth court, then also up to the Supreme Court.

To me, that case there could have been easily handled in the tribal court, and the work could have got done, the houses could have been repaired. All that had to do with was this particular finishing of a house; yet he chose to go through the Federal system.

These systems can be mandated, if properly done by Congress, that those should be handled in tribal court. By God, if a white guy wants to do business on the reservation, he should go through the same system. When we go off the reservation, we are under another court system, and by God, we abide by the law. I do not see

any reason why the white guy can not abide by the laws on the reservation.

We also talked about the credit system within the reservation. Go off the reservation to get credit, our court system can handle credit systems for a long time. We see people's cars getting pulled over there and people just come after them and take them back to wherever they were purchased. It does not seem to bother the purchasing of vehicles by Indians. We still finance off the reservation. We still finance with the State system and with the out-of-State system. You know, that could usually be done in tribal court.

My feeling, Senator Melcher, is that the tribal courts should be given more authority. They should be given authority to handle tribal codes so that if a white guy is speeding and he really can not do too much about that, but he seems to want to take it to Federal court. Those kinds of cases should be handled in the tribal court system. Our tribal court system has the same law and order code for tribal offenses as the State of Montana. There is not much difference in it.

If a guy is drunk, you take a test on him, and it is easy for the court to make that determination, white or Indian. I do not see any reason why a non-Indian should fear that he is not going to get the benefit of a doubt in a tribal court. I see more Indians who want to be white people than white people who want to be Indians. They are going to get their fair shake in the court system; otherwise, you could establish a system where they go up further.

In closing, I guess my feelings on the whole thing is that the tribe itself has to take the bull by the horns. It has to do its own business within the country.

Although maybe our tribe is a little bit different than the Crow Tribe, we have about 95 percent of trust lands on our reservation. The number of people probably is about 90 percent Indian—about 10 percent non-Indian—but the majority of them probably worked with the BIA or farm on the reservation. Some of them made a good living. We have some Indians that also made a good living on the reservation. It is still on their sovereignty, I think you know.

Thank you.

Senator MELCHER. Thank you, Randy. The specific comments you made on the bill of course are very similar to those made by Jack Pumage in 1980, and they are still relevant. However, the fact remains that what we are seeing in the bill is to have a method to enforce law. That is impossible, as you well know, through tribal courts. I asked the question of Jack Pumage in 1980, "what are you going to do with Oliphant?" And the answer—about the *Oliphant* decision, since all tribal police and tribal courts really do not have any jurisdiction over non-Indians based on that decision—I think Jack answered then, "We will give the tribal courts more authority."

That is your recommendation today. What we are trying to find is a solution to that. They do not have the opportunity to give tribal courts more authority. That bill will not pass, either.

So the question is, is there an approach that will allow law and order to be enforced on the reservation? It has to be a new law, it has to be an act of Congress. This is just one of the approaches.

I think it is worth trying again to see whether or not there is enough support. I am willing to go to the effort to put it before the people here in Montana and also before the people in Washington, DC that will testify and then see whether we can put together some bill that can be passed.

Mr. PEREZ. Well, there were some questions I had, like on the police officers. We do not have jurisdiction on the reservation. We do not have a townsite on Fort Belknap Reservation. We do not have a city or mayor or anything of that type on the reservation. Therefore, there really is not a need for concurrent jurisdiction.

We do have problems with non-Indians trying to commit crimes, and also Indians that we consider breeds—and other people consider them breeds—that are Indian but are not enough to be enrolled. Those people seem to like to, you know, rampage around also. But still I think the system that we have works with Indian people. That sure is not the reason, because we do not necessarily have that many non-Indian people on the reservation.

Senator MELCHER. Are Hays and Lodgepole incorporated towns or not?

Mr. PEREZ. Hays and Lodgepole are not incorporated.

They were at one time, I think, townsites.

Senator MELCHER. Are they on the reservation?

Mr. PEREZ. Yes, they are on the reservation. The problem there I do not think it was necessarily the lack of jurisdiction. I think it was not enough testimony to take the case—you know, if you do not have a person that is willing to testify, you may not have a case. Lodgepole I think is probably recognized as one of the areas that was a problem area years ago, but not necessarily as it is now.

In fact, Lodgepole, of all the areas that we have, has the least vandalism.

Senator MELCHER. That's good. Well, I appreciate the fact that when we talk about law and order on the reservation—there are a lot of reservations that really do not have a significant problem—and so I appreciate the fact that you do not have a law and order problem on Fort Belknap.

Mr. PEREZ. We have those problems, but I am saying that the system that we do have works for us.

Senator MELCHER. That is exactly what I mean, that the system that you have in place is eliminating any repetitious problems of law and order that go unsolved and where justice is not served. I think that is what you have been telling us, is it not, justice is served and the system——

Mr. PEREZ. To Indians on the reservation, the system that we have for the Indian people is working.

Senator MELCHER [continuing]. Has worked, and you do not have any problems with non-Indians on the reservation?

Mr. PEREZ. Oh, we have problems with non-Indians.

Senator MELCHER. Well, then, you do have a problem.

Mr. PEREZ. What I am saying is that the system that we have on the reservation for the Indian people could be utilized for the non-Indian people also.

Senator MELCHER. Well, all I am saying is that would take legislation, too. That would take a new bill, and since the *Oliphant* deci-

sion, I know of no bill being offered that would broaden the power of the tribal courts over non-Indians on the reservation.

Mr. PEREZ. You take the *Oliphant* case—my understanding is that the reservation was probably about as big as a half a block or something—and that is completely different. And, it was a 280 State, completely different from Fort Belknap, Cheyenne, or Rocky Boy. Yet their law, is shoved upon Fort Belknap Reservation. The two areas are completely different. You take the alcohol thing in California, I suppose that was about 100 feet there, but they want to put that law within the State of Montana. It is just inequitable. They are different. They are not equal. I think Indian people on a reservation like Fort Belknap will have to stand up for those particular rights.

Senator MELCHER. Thank you very much, Randy, for your testimony.

Mr. PEREZ. I have one other witness from Fort Belknap who wants to talk.

Senator MELCHER. All right, let us take him right now.

STATEMENT OF DONOVAN ARCHAMBAULT, FORT BELKNAP COMMUNITY COUNCIL, FORT BELKNAP AGENCY, HARLEM, MT

Mr. ARCHAMBAULT. Thank you, Senator Melcher. My comments are going to be very short. They are going to be in regard to this bill, but I would like to read you something taken from a saying from Chief Joseph of the Nez Perce Tribe when he addressed a congressional group and many Cabinet members back in—about 106 years ago almost to the day. The date, in fact, was January 14, 1879.

I think what we are talking about here is basically a problem of disparity and equal access to the law, to laws that exist, and I think Randy pointed that out. If I come to Great Falls, I am subject to any law, State, Federal, county, whatever. However, anybody going back to a reservation, a non-Indian is not subject to those same laws.

I am subject to every other law that exists on every other reservation in the United States, so there is a disparity.

Chief Joseph said:

> I know my race must change. We cannot hold our own with the white man as we are. We only ask an even chance to live as other men live. We ask to be recognized as men. We ask that the same law shall work alike on all men. If an Indian breaks the law, punish him by the law. If a white man breaks that law, punish him also.
>
> Let me be a free man, free to travel, free to stop, free to trade where I choose, free to choose my own teachers, free to follow the religion of my fathers, free to think and talk and act for myself, and I will obey every law or submit to the penalty.

He said that, and I think we are saying the same thing today. True, there have been a lot of laws, like the Senator said, treaties and so forth that are particular to Indian tribes. Those laws were passed, treaty rights and so forth, were passed to protect us because we did not have equal access to the law. We were not citizens until 1924, so that facade that has been painted by the good Senator today in regards to equality, and also by the Equal Citizens Committee, or whatever they are, is a facade and only that.

Chief Joseph spoke to a delegation just like we are doing today. Only thing, there were a lot more people. We are asking the same

thing. We want parity and equality. The only way that we know how to get that, I guess, is to exert and exercise the sovereign rights given to us, because if we do not exercise those things, they are going to be taken away from us.

Oliphant is a good case. I do not know what is going to happen with the Crow case. If that had happened off the reservation, nothing would have happened as far as the Indian is concerned.

I would like to submit this letter. I did not know I was going to be here, Senator, and I have written you a letter with some of my concerns. I would like to reiterate a little bit what Chairman Perez said. I read your article in the Great Falls paper, also in the local paper at Harlem, and one of the statements was that, there may be a simple solution to the problem. I guess there is. The problem is getting legislation to rectify the wrong, and I think that if we, as Indian tribes with codes established, passed by our legislative process and approved by the Government through the Secretary of the Interior, have laws on our books that apply to every individual, we should be able to enforce those laws. We do not have the opportunity to try those offenders who are non-Indian.

So, I if we had that vehicle to exercise the rights given to us, treaty, congressional, legislative rights that were given to us through the years, half of the problem would be whipped.

The other half is discrimination. I do not care how much legal legislation we pass, we passed the Equal Rights Act, the Indian Rights Act, this and that, and there is still no equality in things like this in the schools and most everything that comes to mind.

I was somewhat concerned today about some of the things that some of the people said. I was concerned about what some of the Indians stated. But I would like to get a definition of concurrent. You know, what does concurrent mean?

The State of Montana was given concurrent jurisdiction on Indian reservations in regards to liquor, liquor laws, and quotas, and so forth, so the State of Montana sent their committee to every reservation, I presume. They came to ours and they said:

> Now, look, we have this law, concurrent jurisdiction, right to enforce liquor and liquor quotas and the liquor laws, so what we want you guys to do is to do these kinds of things following the State law.

You know, I do not think that is what concurrent means. I do not think that is what it is, unless I misinterpret the word myself. If we had some kind of concurrent jurisdiction or rights as far as non-Indians and Indians are concerned, in adjudicating those cases which are termed as problem cases, or the Indian problem I have been hearing about all day, which to use your term, is "clogging the Federal system," I think if we were able to do those things, try these cases, there would be no clog, there would be no Indian problem, as the Lake County people and the Senator have stated.

But, in view of the fact that there is no law, I would prefer that something on that order be submitted in place of this piece of legislation. Although, I do have to commend you, Senator Melcher. I worked with you on other tribal business, and I appreciate the efforts you have made to provide Indian people a service.

I feel a lot of the times it might have been at great political risk, or at personal risk to yourself, and I want to thank you for that.

Senator MELCHER. Well, thank you, Donovan. You know, it is nice to quote Chief Joseph. I admire him very much. He was a great Indian leader. There are not too many Nez Perce in Montana, but there have been plenty of Indian leaders in Montana among the various tribes.

And perhaps I can just state very candidly to you, Donovan, there are no bills and never have been any bills, that I am aware of, from the time the *Oliphant* decision was rendered. So, since Congress had not acted on the subject previously and had not acted since, we have in effect allowed that to be the law of the land. It is very clear, and you understand *Oliphant* very clearly, I am sure—probably better than I do—but to all of us, it simply means that on an Indian reservation there will not be any trying of a non-Indian before a tribal court. In effect, there shall be no arrest of a non-Indian by a tribal officer.

You might ask, "Why is there not a bill?" Well, I think I can answer that. There is no bill that says the power of Congress will grant the right of Indian courts to try non-Indians. I think the answer is pretty obvious, because based on our Constitution, which we all share, we are all part and policy of making the laws that are derived from that Constitution.

Since a non-Indian cannot be a member of the tribe and therefore cannot participate in establishing the Constitution of the tribe and the laws of the tribe and the very function of the court system that is tribal, the non-Indian will not be subject to that law. A non-Indian has never been a part—has no right in making the constitutional law for various tribes or the bylaws or code of a particular tribe and cannot serve as a tribal member or on the tribal council or on the tribal court.

Mr. ARCHAMBAULT. I understand all that, sir.

Senator MELCHER. Well, then, Donovan, the question is, do we want to establish a procedure where the same procedure would be used in enforcing the law, maintaining law and order on the reservation, whether the person involved is an Indian or a non-Indian, a member of the tribe or not a member of the tribe? Do we want that procedure?

This bill is just one approach to that that says yes, we do want a procedure. Whether it be the right procedure, I am not sure, but it is a procedure where the same law would be applied and the same mechanism of enforcing the law would be applied, whether the defendant is Indian or non-Indian.

Mr. ARCHAMBAULT. Yes; that is the next point I would kind of like to touch on, too. Perhaps there has to be further investigation. We have been studied for so many different things for so long, maybe another study, because when you look back in history the law did not apply to a certain situation out here—taxes or whatever—then that law is changed and people sit down and get together. But, we have not had that opportunity. You know, I read about the hearing today, I called up and I wanted to reserve some time to testify for the chairman, and I was told that it was by invitation only. We never received an invitation. We did not know about this until 2 days before New Year's, and so that gave us about 5 days to find out if anyone else got invitations. No one received invitations to this.

Yet, it is an issue that is of great concern to all tribes, and I think that if that issue is so great, we should sit down. Because, one more thing, maybe the Constitution and bylaws do not apply to the non-Indian. It was also written by a non-Indian, and we have to take that into consideration. I would like to sit down and have the opportunity to draft something that may be particular to our case. If it means a constitutional convention for all tribes, or the throwing out of that Constitution, I think we should do that. Because, if we are talking about equality, we know we are never going to get it. We accept that.

We want to draft a law that is going to give us the opportunity to function as an entity in this society. We have something of that right now. However, it is a very inadequate tool, and I think if it is a matter this grave, I think we should sit down and start talking about alternatives.

Senator MELCHER. Who knows whether we are going to be able to move a bill or not? But, let us do that now. The same points have been made by the Fort Belknap Tribes that were made in 1980. They are valid points. Francis is here, but I do not know if he is still employed by the tribe. Perhaps he has some good ideas.

He has had 5 years to think about it. Maybe he has some good ideas to propose. Let us get them out on the table. That is the purpose of this hearing.

Is Francis still employed by the tribe?

Mr. ARCHAMBAULT. Yes; he is.

Senator MELCHER. Well, Francis, I was referring to you.

FRANCIS. Yes, sir.

Senator MELCHER. I was saying you had 5 years, or almost 5 years to think about this procedure. Donovan said that maybe you had come up with some better suggestions.

FRANCIS. Yes, Senator.

Senator MELCHER. That is what the hearing is about. Let us elicit those suggestions.

FRANCIS. We intend to accompany the same testimony that was presented by Mr. Pumage. We intend to supplement that and perhaps send you a whole new jurisdictional statute that would cure all these ailments.

Senator MELCHER. We would like the whole cure. Thank you very much, Donovan. Thank you, too, Francis.

Donovan, your letter will be made a part of the record at this point.

[The letter follows:]

Fort Belknap Community Council

(406) 353-2205
P.O. Box 249
Fort Belknap Agency
Harlem, Montana 59526

Fort Belknap Indian Community
(Tribal Govt.)
Fort Belknap Indian Community
(Elected to administer the affairs of the community and to represent the Assiniboine and the Gros Ventre Tribes of the Fort Belknap Indian Reservation)

December 31, 1984
DATE

The Honorable John Melcher
U.S. Senator from Montana
253 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Melcher:

In reference to your article in the December 24, 1984 edition of the Harlem News, Harlem, Mt. I agree that there is a problem of jurisdiction and law and order on and near Indian Reservations. The problem is not one of law and order per se, it is one of out right discrimination.

The Indian on or near the reservation is subject to every law in the city, county, State and Federal codes as well as a code written for every reservation in the country. We are subject not only to the codes written for our specific reservation, but to the codes of any other reservation we visit, pass through or wonder into. These laws, executive orders, federal statutes and treaty rights were passed to protect us because we do not receive due process and equal protection under the law.

There are daily violations of tribal codes by non-Indians because the non-Indian knows that he cannot be prosecuted under tribal codes, yet if an Indian violates any city, county, state or federal law, he is tried in the court where the violation occurs. Why is that? The tribes have codes and courts also.

Case in point . . . The State of Montana was given concurrent jurisdiction on liquor laws on Indian Reservations. The State immediately dispatched their henchmen and Indian haters to inform the Tribes that they must conform to the State law and their quota for liquor licenses. Unless the definition of concurrence is different in the states edition of Webster's Dictionary, they failed to interpret the word. In this instance, the Tribe informed the delegation that there is a liquor code and quota system already in place and perhaps they should make a visit to the library and seek a contemporary definition of the word "concurrent". One thing is becoming more evident in these modern times; Tribes are seeing more and more of these delegations today, when a few years ago, the delegations were always from the reservations. Lately, we've seen the water delegation, the liquor delegation, the oil and gas delegation, the coal delegation, just to name a few.

No, Mister Senator, I don't think we need another layer of bureaucratic mayhem, probably at a staggering cost to the already overtaxed public, (it would just add another label, stigma to the Indian) let the Tribes prosecute those crooks like they prosecute Indians and the problem would be half solved. The other half of the problem is discrimination. Tribes, as well as yourself, know that all of the legislation, executive orders and what have you, will never change that.

In regards to the statement that there is "a general lack of law enforcement on Indian reservations" sounds very general in itself. If this is the case, there is a general lack of law and enforcement in every community of 100,000 population. Is the "clog in the federal system" only because of Indians? If this is the case, again let us trial the offenders in tribal courts. Most of the "clog" is brought about when an Indian and non-Indian is involved and the offense is commited on the reservation. (The Lodge Grass School Case). If this happened off the reservation, there would be no case. The Indian wouldn't have had a chance.

I believe that Chief Joseph of the Nez Perce tribe said it best to a large gathering of cabinet members and congressmen on January 14, 1879 when he said in part:

> "I know my race must change. We cannot hold our own with the whiteman as we are. We only ask an even chance to live as other men live. We ask to be recognized as men. We ask that the same law shall work alike on all men. If an Indian breaks the law punish him by the law. If a whiteman breaks the law, punish him also.
>
> Let me be a free man - free to travel, free to stop, free to trade where I choose, free to choose my own teachers, free to follow the religion of my fathers, free to think and talk and act for myself and I will obey every law or submit to the penalty".

He spoke to a delegation, just as we are doing today and it has been 106 years ago and we are still asking the same thing. The Indian has submitted to every law and has been subjected to every penalty to the fullest extent of the law without adequate due process. It is the whiteman who submits only to the laws he chooses. If there is no law that applies to a particular situation, then he passes another law under the facade that is applies to all, when is reality it is used only at the convenience of the whiteman. Look at the tax laws! Whose interests do they really serve?

In the past year, one Indian was shot and killed by another. A trial date was set and the offender was tried in a matter of three months. Another case of shooting took place on the reservation approximately 13 months ago. This individual was also tried in a now normal length of time. These cases involved only Indians. In every case where a non-Indian is charged with an offense, the case is still pending. This has been the trend during the past ten years, that I have been directly involved in law and order on this reservation.

True, "there are serious gaps in the law and the judgements and decisions which come as a result of the lawsuits which often resolve little or nothing", because Indians cannot trial the law-breakers on the reservation as the Indian is tried in the whitemans court.

There <u>is</u> a simple solution to this complex and perplexing problem. It is simple and it can't be any more of a wrong than that which exists now. <u>Let us trial our own offenders in our courts,</u> BOTH the INDIAN and NON-INDIAN and the problem will be solved in a simple and least costly manner.

I want to personally thank you for your efforts in trying to remedy an age old problem, even though I don't agree with your approach. In the past ten years, you have given your support to every Indian cause at political risk to yourself and for your support I commend you.

Thank you,

Donovan Archambault

Donovan Archambault

Senator MELCHER. Our last witness is Jim Steele, vice chairman of the Flathead Tribe.

STATEMENT OF JIM STEELE, VICE CHAIRMAN, FLATHEAD TRIBE

Mr. STEELE. Thank you, Senator. It has been a while since I last saw you, I believe in Washington, DC.

I have a prepared statement here, but I would like to make some remarks before I read it, to kind of justify where I am coming from. I spent 10 years in the field of law enforcement on Indian reservations, not only my own. I worked throughout the United States on various details. I reached the rank of criminal investigator for the Bureau of Indian Affairs and held the dual position of chief of police of the Coeur d'Alene Reservation.

One of the things I did when I traveled was I reviewed, or I kind of looked at the judicial system on Indian reservations comparing it to my own. Since then, I have come home, and in a weak moment, I got involved in politics. Since then, I have still been active in the legal system for the tribal court, besides being vice chairman.

Now, I want to address some of the concerns here of this gentleman on this side here and the chairman from the Fort Belknap Reservation. I think the biggest problem with enforcement of any Federal law—unfortunately, we are not under the same system they are. We are the only tribe foolish enough to agree to concurrent jurisdiction with the State. One of the biggest problems that I personally experienced was that there was not enough effort put out by the Federal Bureau of Investigation. They refused to recognize the professional ability, the investigative authority and training of criminal investigators on Indian reservations.

Rather than come into a reservation and take up the slack or to lend assistance toward an investigation of a major crime, the Federal Bureau of Investigation would come in and try to find fault with that, and in essence would get it thrown out of court or referred back to tribal court.

The U.S. attorney's office, using the excuse that they had too much of a caseload, would kick back various cases that were really serious in nature. Both Indian and non-Indian were affected. It was rather sad, it was frustrating, and still exists. I do not think it will ever change.

I have a statement here, plus some rebuttal to these individuals back here that obviously thought they could represent the Flathead Tribe. Law enforcement, and this is my personal opinion on what law enforcement is, should be, and can work on reservations to where cross-deputization amongst county and bureau officers and tribal officers worked very well. I believe in professionalism, I believe in good solid training, I believe in cooperation, regardless of your race. Politics and race cannot interfere with good law enforcement or any judicial system. However, it does exist on reservations, on or near.

Law enforcement on reservations, or anywhere, for that matter, should not be tainted in any way with politics or racial considerations. However, the bottom line is that these problems do in fact exist on or near reservations. On the Flathead Reservation, it is not in the area of prosecution, but one of equal consideration and

cooperation between the tribal, city, county, and State officals, and for them to recognize the fact that tribal officers must meet, by our standards, more rigid training standards in the field of law enforcement than a lot of county and State officials do presently. Especially when you consider the fact that any registered voter can throw his hat in the ring for the position of sheriff of that county, without any requirements or prior experience or proven expertise in the very complex field of law enforcement.

A Federal magistrate would be of minimal assistance to the Flathead Tribe in the areas of trespass on Indian land in violation of permit ordinance by non-Indians. We would recommend in addition to this bill that you support legislation that is more in line with the Indian Self-Determination Act and increase the monetary and professional credibility of tribal courts throughout Montana, or force cross-deputization.

The impact of this bill would also eliminate the jurisdiction and credibility of all tribal courts in the area of civil and misdemeanor criminal jurisdiction, and due caution in this area should be exercised.

In response to the so-called ACE organization, Senator, there is not a cooperative agreement between the Salish and Kootenai Tribe and Lake County, and each and every effort to develop such an agreement was met with political and racial barriers. The tribal council in the early 1960's, my tribal council, entered into a good faith, what they thought was a good-faith agreement with the State of Montana, which meant that the State, county, and Federal officials would share in their effort to prosecute offenders regardless of what code they came under.

The way it was supposed to work, ideally, was that the sheriff of Lake County, where we have four counties on our reservation—Flathead, Lake, Sanders, and Missoula—the only one we appear to get along with is Missoula, and sometimes Sanders. It was, that if a sheriff had a situation involving an Indian and a non-Indian, the way the concurrence issue was supposed to be handled was the sheriff would come in and handle the non-Indian offender, the tribal officer would handle Indian offenders. Basically, it traded off.

If there did not happen to be a sheriff's deputy or a city officer present and a non-Indian committed a crime, the deputy tribal officer had the authority to hold or to incarcerate. That worked for about 1½ or 2 years. Then the State realized what they had.

The tribal council, in the early 1960's, entered into the good-faith agreement, but it turned into a one-man show. It was basically what I consider a CIA operation, to the point that concurrency, as it originally intended, does not exist in Lake County. It is a one-sided enforcement of State law by the Lake County Sheriff's Department almost exclusively over Indian people.

As far as this issue goes, our tribes have gone on record more than once and are now pursuing an attempt to rescind this fiasco being referred to as "concurrent jurisdiction," due to the fact that although you refer to the higher number of whites versus Indians on the reservation, the county and State court dockets contain a hell of a lot more names of Indians than they do non-Indians. Plus, Montana State Prison is so heavily populated with Indians of the Flathead Reservation that we should consider establishing Box 7,

Deer Lodge, as the official mailing address of Flathead Reservation No. 2.

Senator, there were some issues brought up regarding civil impact, civil jurisdiction, this type of thing, by a gentleman from Polson. I wish he could have stayed. I have with me our chief legal counsel, Dan Decker, who is well versed in State, Federal, and county laws and civil laws, and I would like to have him respond to some of these other issues that were brought up.

I apologize, Senator, for being as harsh as I have been, but these are issues that are very close to home with me and with my tribe, and it bothers me to have people assume that things are working out well when they are not actually doing that.

I appreciate the time you have afforded me, and I hope to see you again. Thank you.

Senator MELCHER. Thank you, Jim. Did Dan Decker want to submit some testimony, or how did you want to handle it?

Mr. DECKER. Senator, I would like to testify orally.

Senator MELCHER. Please do so.

STATEMENT OF DAN DECKER, CHIEF LEGAL COUNSEL, FLATHEAD INDIAN TRIBE

Mr. DECKER. Senator, Honorable delegation here today, I would like to thank, at this time, all of the tribes that have participated in taking the time and traveled long distances to make their opinions known about the piece of legislation that we are looking at today. I would also like to thank our Heavenly Father for watching over all of you people while you have traveled, and ask that He will watch over all of you as you are traveling home.

I will try to keep my comments short, as brief as possible, and to the point, because it has been a long day already.

The bill as it now stands seems, as has been discussed earlier today, to really confine itself to Federal offenses or things that currently exist in Federal law and would establish a magistrate system to handle that or to assist in the process of prosecution of minor Federal offenses that now go unpursued by U.S. attorneys or the existing Federal magistrate.

That portion of the bill, in the sense that the bill now exists, would assist the Flathead Tribes, Salish and Kootenai Tribes, most particularly in the area of the non-Indian offenders who traspass on tribal lands, who damage tribal resources, and who remove tribal resources from private lands. There have been real inadequate remedies available under that line, and as the statute now stands, it would assist in that.

However, I think that our tribe's position, from talking to council members before we left—we were not sure whether or not we would be able to testify today—and in that sense, hopefully we have saved the best for last—but I think it would be more in the spirit of Indian self-determination to be looking at a piece of legislation that was more in line with what the Policy Review Commission of 1975 and 1976 recommended, and that was to strengthen the jurisdictional aspects of the tribal government, both in the line of civil and criminal jurisdiction.

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It was interesting to note that the Policy Review Commission, looking at the problems of Indian country for 2 years across all of the United States on Indian reservations, that commission report recommended that there be a limited criminal jurisdiction over nonmembers residing on Indian reservations. It was very interesting to note that the U.S. Supreme Court in the *Oliphant* decision decided that that should not be the case, based upon, as Mr. Perez had mentioned earlier today, a very limited factual situation of where non-Indians vastly outnumbered Indians on a very small Indian reservation. I think had the factual situation been different, similar to Crow, Cheyenne, Rocky Boy, where the majority of people residing on those lands were Indian and the minority were non-Indian, that the Court might have looked at it differently.

It's interesting to note that the two lower courts unheld what the tribal courts did.

We spent a lot of time today discussing the *Lodge Grass School* case, and probably wasted that time, because the Supreme Court will let us know, I hope within this upcoming year, what the answer to that is to be. But I think it would be more in line with Indian self-determination to look at something that would strengthen the tribal court system, to strengthen the powers, to provide additional funding to those systems or assistance to those systems in the area of training, that would strengthen the tribal sovereignty, that would give a much clearer tribal authority on tribal lands, and the tribes are just as experienced about the health, welfare and safety of all reservation residents, I think, as much as anybody else.

I think that the Confederated Salish and Kootenai Tribes have shown a very strong interest in protecting all reservation residents with legislation that the tribes have passed, like in accordance with the Clean Air Act, asking for class I clean air quality, protecting the water quality or Flathead Lake, and being very concerned with the kind of structures that are built on the lake. I think our environmental concerns on the reservation demonstrate the concerns that the tribe has for all residents of the reservation.

The fear that the tribes have at this point is that this piece of legislation opens the door to a diminishment of what already exists, and that what we have experienced, and as has previously been stated, that concurrent jurisdiction has not answered the problems. We have just as many horror stories about lack of prosecution against non-Indian offenders as Senator Graham had about the lack of prosecution against Indian offenders. We have just as many stories about lack of responsiveness on city police and county police where non-Indians are damaging Indian property and many times assaulting Indian people.

For us, I think our position, as I stated earlier, would be to strengthen what is already in place, rather than trying to create something that would be new. I think if we concentrated on that, if we could get counties to be more cooperative, for example, with cross-deputization, some of these problems could be answered. But there has been difficulty, and local relations many times are not good.

That briefly, I guess, are my comments for today. I think I would like to reaffirm any of the things that Randy Perez, on behalf of

Fort Belknap stated as far as the technical provisions of the act. I think many of those statements were essentially correct, and as I stated earlier, would like to ask that we be allowed to submit written testimony within the 30-day timeframe that I believe was mentioned earlier today.

Senator MELCHER. Yes; we would welcome written testimony or written comments, and thank you very much, Dan.

Do you have anything else?

Mr. DECKER. No; that is all, sir.

Senator MELCHER. Thank you very much for testifying.

If any of you care to have a copy of the bill or want the analysis of the bill, we have them here for you, and you are free to take them.

That concludes this hearing, and the record will remain open for 30 days.

[Whereupon, at 2 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL RECEIVED FOR THE RECORD

The Honorable Senator John Melcher
Room 253
Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Melcher:

In the course of your hearing on your Bill S.3092 (Federal Magistrates) in Great Falls on 3 January 1985 you indicated to me that there were no jurisdictional problems on the Flathead Reservation and my response was that the problems were just beginning.

As a case in point, I am enclosing a copy of a Public Notice that appeared in our local paper on 9 January 1985 relative to an election, by tribal members only (who do not even have to be registered),--"for the purpose of voting on three (3) amendments to the Confederated Salish and Kootenai Tribes constitution." A careful reading of these amendments will reveal that they are almost exclusively directed at extension of tribal law to non-indians. Amendment A provides for "--levying excises or assessments upon persons doing business----or utilizing facilities, resources, or services--provided by the tribe." Obviously if this amendment is allowed, the tribes will claim that "resources" will include water for which their claims must still be adjudicated. Amendment B will allow the tribe to "---regulate the conduct of trade and the use and disposition of property---and require the payment of fees----". Amendment C imposes tribal jurisdiction on non-indians.

Obviously for non-indians owning and living on lands that were formerly part of the reservation, the threats contained in these proposals are offensive and completely unacceptable. If history serves me correctly, this country fought a war over the issue that "Taxation Without Representation is Tyranny". Are we, the non-indians of this region, expected to do less today? Further, we are completely and irrevocably opposed to efforts by the tribe to dictate the "--use and disposition of property----" for which non-indians have clear and exclusive title. Finally, the tribes' attempts to bring non-indians under the jurisdiction of tribal courts (run exclusively by indians) is in direct conflict with Oliphant vs. Shile (as I understand that decision) and they, the tribe, know that. We reiterate the statement made in the 3 January 1985 hearing that "Attempts to force non-indians into tribal courts run exclusively by Indians is -- a giant step backward in honest efforts to eliminate racial bias."

We are sure that you understand that our objections would be materially alleviated if one could convince the tribe that "the reservation" refers to "public lands held in trust for the use of Indians".

The only other recourse at this time seems to be to convince the Secretary of Interior that these amendments are unwarranted in the conduct of tribal affairs and will only add to the growing friction between indian and non-indian. Any assistance that you can provide us in convincing the Secretary that approval of these amendments would be ill-advised would be appreciated.

It is hoped that these comments will also be incorporated into the record of proceedings on your Bill S.3092.

Sincerely yours,

Jack H. Rupe

Jack H. Rupe

For: ACE (All Citizens Equal)
6 Third Avenue West
P.O. Box 673
Polson, MT 59860

cc: Under separate cover
To William S. Clark
Office of the Secretary
U.S. Dept. of Interior
Washington, D.C. 20240

PREPARED TESTIMONY OF THE CHIPPEWA CREE TRIBE REGARDING SENATE BILL 3092, THE "INDIAN RESERVATION SPECIAL MAGISTRATE AND LAW ENFORCEMENT ACT OF 1984"

The Chippewa Cree delegation would first like to express our sincere appreciation to you, Senator Melcher, for being invited to testify at these hearings.

The Chippewa Cree Tribe of the Rocky Boy's Reservation has been particularly concerned over the problems of jurisdiction and the prosecution of non-Indians who commit offenses on reservation lands. While we applaud your efforts in drafting Senate Bill 3092, the "Indian Reservation Special Magistrate and Law Enforcement Act of 1984," nevertheless we are deeply concerned over a number of issues which the Bill, as currently drafted, raises.

1. IN WHAT RESPECT, UNDER PRESENT TRIBAL CONSTITUTIONS, WILL TRIBAL JURISDICTION BE EFFECTED OR IMPAIRED?
2. WILL IMPLEMENTATION OF THIS BILL EFFECTIVELY UNDERMINE TRIBAL JUDICIAL SYSTEMS?
3. IN CASES WHERE OFFENSES FALL UNDER BOTH TRIBAL AND FEDERAL LAW, UNDER WHAT CONDITIONS WOULD TRIBAL OR FEDERAL LAW TAKE PRECEDENCE? WHO WOULD MAKE THIS DETERMINATION?
4. WOULD TRIBAL POLICE HAVE THE AUTHORITY TO DETERMINE WHETHER INDIVIDUAL CASES ARE PROCESSED THROUGH THE TRIBAL COURT OR A FEDERAL MAGISTRATE? ASSUMING THIS TO BE THE CASE, GIVEN PRESENT LEVELS OF POLICE TRAINING WOULD THIS NOT BE AN UNWARRANTED DELEGATION OF AUTHORITY?
5. PRECISELY HOW DOES THIS BILL BENEFIT INDIAN PEOPLE?
6. WOULD TRIBAL CUSTOMS STILL BE RECOGNIZED UNDER THIS SYSTEM?

After thoroughly examining Senate Bill 3092, we have found no satisfactory answers to these questions.

As presently drafted, Senate Bill 3092 poses a serious threat to Tribal Sovereignty. We further believe it is contrary to the spirit of the Indian Self-Determination Act.

The Chippewa Cree Tribe is currently adopting a new Law & Order Code and attempting to upgrade the judicial system. Our immediate need is for a full time Criminal Investigator. As presently written, we believe that Senate Bill 3092 would ultimately serve to undermine the present Tribal judicial system and, for this reason, cannot support it.

RECEIVED FEB 11 1985

CROW TRIBAL COUNCIL

OFFICE OF THE CHAIRMAN
CROW AGENCY, MONTANA 59022

DONALD A. STEWART SR., CHAIRMAN
RICHARD REAL BIRD, VICE-CHAIRMAN
TRUMAN C. JEFFERSON, SECRETARY
CHARLES B. JEFFERSON, VICE-SECRETARY

February 4, 1985

Crow Country

UNITED STATES SENATE
Select Committee on Indian Affairs
Washington, D. C. 20510

RE: S.3092, "The Indian Reservation Special Magistrate Act."

Dear Committee Members and Staff:

We were not able to attend the January 3, 1985 hearing held in Great Falls, Montana, Senator Melcher on the above proposal, because we were busy at home handling pressing Tribal Council Matters. However, three members of the Crow Tribal Council did attend the hearing and entered testimony in opposition to the proposed bill, and we would like to go on record officially as fully endorsing and supporting the testimony given on January 3, 1985, by Crow Tribal Council members Tommy Round Face, Kayle Howe and Dale Kindness. As you know, the Crow Tribe is on record being opposed to a similar measure introduced by Senator Melcher earlier on, and also opposed to a similar bill sponsored by Representative Ron Marlenee in 1981. The reasons why the Crow Tribe went on record opposed to the earlier similar versions of a U. S. Magistrate System are similar to the reasons why we are opposed to the present bill, S. 3092, and we request the Committee to review the record during hearings on the earlier versions.

We appreciate your on-going concern and hard work in matters which deal with all Native Americans, and in particular, the Crow Tribe, but we feel that the bill proposed by Senator Melcher, S.3092, in it's present form, would infringe upon the governmental rights and authority we possess as the Crow Tribe, the right to make our own laws and to administer law over our territory by and through the Crow Tribal Judiciary. Moreover, S.3092 proposes to establish an additional court system for our Crow People and Crow Reservation, and we feel that the additional court and police establishment cannot realistically co-exist with the Crow Tribal Law and Order structure in place, and in fact, would only create more conflict in the areas of both civil and criminal jurisdiction.

At present, Crow People are subject to the following laws and court systems: 1. Crow; 2. State; and, 3. Federal. We simply do not need

the additional system envisioned by S.3092, since it could lead to a bigger ball of confusion in many respects.

Enclosed for the record is a copy of a resolution proposed for the January 12, 1985 Crow Tribal Council Meeting. Although the meeting adjourned without taking action on the proposed resolution, we would inform the Senate Select Committee on Indian Affairs, that the resolution would have passed unanimously in our estimation, because there was no opposition voiced by members of the Tribe. Our signatures on this letter hopefully will demonstrate to the Committee our concurrence with this resolution, and please also note that this resolution was Item No. 17 on a lengthy agenda list.

We admit that the Crow Tribal Criminal Justice system is not perfect, and there is room for improvement, just like in any anglo court system in the State of Montana or the United States. But to establish an additional system here, in our view, is not a realistic approach or solution. We suggest that additional funding for the Crow Tribal Criminal Justice System be forthcoming from the Congress, and this in our view would better help iron out our differences. Should this bill pass despite our strong objections to it, we ask that the Crow Tribe of Indians be specifically excluded from its provisions.

In closing we offer the entire Committee and Staff that you come down here to the Crow Reservation and perhaps we can sit down together and draft a more acceptable and realistic bill together---is that not a more fair and just approach to a law that may affect us for the rest of our lives? We submit that the present bill relects only one side and once again the Indian is left out with no voice, or participation.

Thank you for your time, attention and consideration, and we shall look forward to hearing from you in the near future that the bill did not pass or excludes the Crow Tribe of Indians from its provisions.

DONALD A. STEWART, CHAIRMAN
CROW TRIBAL COUNCIL

RICHARD REAL BIRD, VICE-CHAIRMAN
CROW TRIBAL COUNCIL

TRUMAN C. JEFFERSON, SECRETARY
CROW TRIBAL COUNCIL

CHARLES B. JEFFERSON, VICE-SEC.
CROW TRIBAL COUNCIL

ENCLOSURE FOR SELECT COMMITTEE ON INDIAN AFFAIRS

RE: S. 3092

FROM FOUR CROW TRIBAL COUNCIL OFFICIALS FEB. 4, 1985

RESOLUTION NO._____

ESOLUTION OPPOSING SENATOR MELCHER'S BILL ESTABLISHING FEDERAL MAGISTRATE INDIAN RESERVATIONS:

REAS, the Crow Tribal Council asserts its sovereign rights of Government through the adoption of a Law and Order Code and the establishment of the Crow Tribal Court, and

REAS, Senator Melcher legislation proposes to establish Federal Magistrates in place of the tribal court system, and

REAS, this ill thought legislation undermines and destroys the inherent sovereign status of tribal governments.

REFORE BE IT RESOLVED, that the Crow Tribal Council by this action officially opposes Senator Melcher's Bill pertaining to the establishment of Federal Magistrates on Indian Reservations.

IT FINALLY RESOLVED, that the Crow Tribal Council is supreme in this determination and that the Tribal Officials are hereby directed to uphold this position.

SED, APPROVED AND ADOPTED, this 12th day of January, 1985, by_____votes for

ption and_____votes against adoption.

DONALD A. STEWART, SR., CHAIRMAN
CROW INDIAN AGENCY

EST:

MAN C. JEFFERSON, SECRETARY
W TRIBAL COUNCIL

NOTED:

WYMAN D. BABBY, SUPERINTENDENT
CROW INDIAN AGENCY

CROW TRIBAL COUNCIL

OFFICE OF THE CHAIRMAN
CROW AGENCY, MONTANA 59022

DONALD A. STEWART SR., CHAIRMAN
RICHARD REAL BIRD, VICE-CHAIRMAN
TRUMAN C. JEFFERSON, SECRETARY
CHARLES P. JEFFERSON, VICE-SECRETARY

Crow Country

ENCLOSURE FOR SELECT
INDIAN AFFAIRS COMMITTEE
FROM CROW TRIBAL OFFICIALS
FEBRUARY 4, 1985

JANUARY 4, 1984

NOTICE OF MEETING

NOTICE IS HEREBY GIVEN THAT GENERAL SESSION OF THE CROW TRIBAL COUNCIL WILL BE HELD AT THE CROW TRIBAL GYM, CROW AGENCY, MONTANA ON THE 12TH DAY OF JANUARY, 1985 AT 2:00 PM. FOR THE PURPOSE OF CONSIDERING THE FOLLOWING AGENDA:

1. A RESOLUTION OF THE CROW TRIBAL COUNCIL PERTAINING TO OBTAINING CERTAIN LAND IN THE ST. XAVIER AREA FROM THE CATHOLIC MISSION.
2. A RESOLUTION CONCERNING THE COAL DISPUTES WITH THE GULF OIL COMPANY AND AMERICAN METAL CLIMAX, INC.
3. A RESOLUTION PERTAINING TO THE CROW TRIBE TO REQUEST FUNDING FROM BIA & OFFICE OF HUMAN DEVELOPMENT SERVICES, HHS BY THE CROW TRIBE UNDER THE INDIAN CHILD WELFARE ACT, PUBLIC 95-608.
4. A RESOLUTION OF THE CROW TRIBAL COUNCIL PERTAINING TO THE PROGRAMING OF THE JUDGEMENT FUNDS AWARDED IN DOCKETS 796-71 AND 797-71.
5. A RESOLUTION PERTAINING TO A RESERVATION WIDE SEISMIC PROGRAM.
6. ITEM 6 WITHDRAWN
7. A RESOLUTION DEFINING THE DUTIES OF THE CHAIRMAN OF THE CROW TRIBE.
8. A RESOLUTION TO REPEAL, RESCIND AND TO EXPUNGE RESOLUTIONS 85-5 AND 85-6 AND TO REAFIRM AND REESTABLISH RESOLUTION 78-18 AND FOR OTHER PURPOSES.
9. (A) A RESOLUTION OF THE CROW TRIBAL COUNCIL TO REAFFIRM RESOLUTION NO.84-60 FOR THE SELECTION AND ELECTION OF CROW HOUSING BOARD MEMBE AND EXECUTIVE DIRECTOR. THIS RESOLUTION SHALL AMEND THE CROW TRIBAL ORDINANCE NO. 17.
   (B) A RESOLUTION OF THE CROW TRIBAL COUNCIL PERTAINING THE CROW HOUSING AUTHORITY BOARD OF COMMISSIONERS.
10. A RESOLUTION TO AMEND THE FISCAL YEAR 1985 CROW TRIBAL BUDGET FOR T INCREASE OF PER CAPITA PAYMENTS AND ALSO PERTAINING TO THE FISCAL Y 1985 SUPPLEMENTAL BUDGET.
    (A) A RESOLUTION OF THE CROW TRIBAL COUNCIL RELATING TO THE FUNDING REQUEST OF THE INDIAN HANDICAP ASSOCIATION.
11. A RESOLUTION RENEWING THE GENERAL COUNSEL ATTORNEY CONTRACT WITH TH LAW FIRM OF FREDERICKS & PELCYGER.
12. A RESOLUTION TO SATISFY THE JUDGEMENT OF THE U.S. DEPARTMENT OF LAB
13. A RESOLUTION OF THE CROW TRIBAL COUNCIL APPROVING AN AGREEMENT WITH THE BUREAU OF RECLAMATION CONCERNING THE USE OF THE CROW TRIBE'S WATER RIGHTS FROM THE BIG HORN RIVER FOR DEVELOPMENT OF THE TRIBE'S MINERAL RESOURCES.

14. A RESOLUTION OF THE CROW TRIBAL COUNCIL PERTAINING TO A FEASIBILITY STUDY FOR A COAL SLURRY PIPELINE.
15. A RESOLUTION OF THE CROW TRIBAL COUNCIL SETTING A DATE FOR A REFERE DUM ELECTION FOR THE PURPOSE OF ADDING A NEW SECTION TO ARTICLE VII OF THE CROW TRIBAL CONSTITUTION.
16. A RESOLUTION OF THE CROW TRIBAL COUNCIL SETTING A DATE FOR A REFERE DUM ELECTION FOR THE PURPOSE OF AMENDING THE CROW TRIBAL CONSTITUTI AT ARTICLE VI, SECTION 10.
17. (A) A RESOLUTION OPPOSING SENATOR MELCHER'S BILL ESTABLISHING FEDEP MAGISTRATE ON INDIAN RESERVATIONS.
(B) A RESOLUTION OF THE CROW TRIBAL COUNCIL OPPOSING SENATOR MELCHE BILL GIVING NON-INDIAN SURFACE OWNERS THE RIGHT TO PREVENT DEVELOPM OF THE CROW TRIBE'S COAL.
18. A RESOLUTION PERTAINING TO THE FINANCIAL STATEMENT THAT WILL GIVE T CROW TRIBE AN ACCURATE REPORT OF THE CURRENT FINANCIAL CONDITION OF THE CROW TRIBE.
19. A RESOLUTION TO WAIVE THE PROVISIONS OF THE ACT OF JUNE 19,1939. (53 STAT. 840; 25 U.S.C. 68A, 87A, 441) FOR CROW INDIAN MEMBERS EMPLOYED BY THE U. S. GOVERNMENT.
20. A RESOLUTION OF THE CROW TRIBAL COUNCIL, PROVIDING FOR THE SELECTING AND APPOINTING OF DELEGATES TO REPRESENT THE CROW TRIBE AND FOR OTHER PURPOSES.
21. A RESOLUTION PERTAINING TO ENROLLMENT.
22. A RESOLUTION PROVIDING FOR THE ESTABLISHING OF THE CROW DIVISION OF ENVIRONMENTAL QUALITY, THE DEVELOPMENT OF WATER, AIR, PESTICIDE AND HAZARDOUS WASTE CONTROL CODES, IN SUPPORT OF WATER RIGHT LITIGATION/NEGOTIATION STRATEGY.
23. A RESOLUTION PERTAINING TO EMPLOYMENT ON THE CROW RESERVATION.
24. A RESOLUTION OF THE CROW TRIBAL COUNCIL PERTAINING TO RESOLUTION NO. 84-41 AND 84-64 FOR THE PURPOSE OF THE CROW TRIBAL BOOKKEEPER' SALARY.
25. A RESOLUTION FOR THE CROW TRIBAL COUNCIL A RESOLUTION AUTHORIZING THE OPTION TO LEASE 37,500 ACRES OF CROW TRIBAL MINERALS IN TOWNSHIPS 6S, 7S, 8S, 9S, RANGES 36E, 37S, 38E., BIG HORN COUNTY, MONTANA FOR OIL AND GAS DEVELOPMENT.

RESPECTFULLY SUBMITTED,

TRUMAN C. JEFFERSON, SECRETARY
CROW TRIBAL COUNCIL

LAW OFFICES OF DOUGLAS Y. FREEMAN
631 NORTH CENTER
P. O. BOX 353
HARDIN, MONTANA 59034
(406) 665-1412

DOUGLAS Y. FREEMAN
NATASHA J. MORTON

March 7, 1985

Senator John Melcher
1123 Dirksen Senate Office Building
Washington, DC 20510

RE: Magistrate's Bill S.3092--Indian Reservations

Dear Mr. Melcher:

Mr. Erle C. Gross of the Little Horn State Bank has asked that I review the above bill introduced by you. I want to commend your efforts to correct some of the jurisdictional problems that occur on and near the Indian Reservation.

As I read the proposed bill, the magistrate's jurisdiction is limited to the Indian reservation and additional areas defined as Indian Country, Title 18, Section 1151. By definition this includes non-trust lands. It would seem that the state should retain jurisdiction in criminal and civil situations involving non-Indians and non-trust lands only. This has not created any jurisdictional problems in the past.

A question comes to mind involving criminal cases to be tried in the magistrate's court as to which criminal laws would apply. If there is no applicable federal law, would the magistrate's court follow tribal law or state law? Reference is made to the Federal Assimilated Crimes Act.

These same questions will also arise in civil cases. I believe that the clarification to these issues should be inserted in the bill.

Another issue that should be resolved is the authority of the magistrate's court over Indian trust lands. For example if a judgment is obtained against a defendant also a member of the tribe, will the magistrate have authority to satisfy a judgment by execution on the trust lands? It appears that he would have that authority over non-trust lands.

Since you have conducted hearings on the legislation, I would be interested in reviewing other opinions that you may have received and further comment on this matter.

Very truly yours,

DOUGLAS Y. FREEMAN

DYF/cw

FIRST
NATIONAL
BANK
of Cut Bank

Box 2397
CUT BANK, MONTANA 59427
Telephone 873-5517

A. F. WIEDEMAN, JR.
Executive Vice President

January 22, 1985

Senator Melcher
730 Hart Building
Washington, D.C. 20501

Dear Senator Melcher:

Thank you for providing me with a copy of your bill #3092. While I certainly agree that a Magistrate on our Indian Reservation is a step in the right direction, I strongly feel that it must also provide some type of civil jurisdiction. Since credit institutions cannot enforce contracts etc, it creates an extreme handicap and absolutely no incentive to seek business on the reservation.

When I appeared in Washington last year before the Senate Committee on Indian affairs, I testified at that time that part of the reason for the failure of the Browning Bank was due to lack of civil enforcement for banking institutions and no cooperation by the Tribal Council.

I appreciate your work on this problem, but it is again my feeling, Senator, that we definitely need more than a Magistrate, as we have Wilbur Werner in place at the present time.

Sincerely,

Art Wiedeman Jr.
Executive Vice President

AFW:tp

January 17, 1985

Senator John Melcher
Senate Office Bldg. 730 Hart
Washington, DC 20510

RE: Federal Magistrates on Indian Reservations - S. 3092

Dear Senator Melcher,

CRIMINAL. It is true that serious crimes from the reservations slip through the cracks due to high federal/state caseload and underfunding for tribes. In view of the federal policy of "Indian Self-Determination," 25 USC §450, does the bill take away or add to tribal self-government? S.3092 is geared to criminal law and would exert more federal control over Indian people. An ALTERNATIVE: The tribes could contract for federal judicial services which you propose. Presently, the tribes contract with the U.S./Bureau of Indian Affairs for judicial services (police, courts, judges) on the reservations. There is concurrent jurisdiction over the Major Crimes Act between the U.S. and tribes; or if the feds do not prosecute the tribes can now do so in theory. This effort has been hampered by low funding and minimal standards for PL 93-638 contracts (prosecutors, judges). By minimal standards I mean people needing more training or practical experience. Such standards are set by the tribes and often turn into political patronage jobs, like the federal system (but who must at least be law-trained).

CIVIL. The bill does not address civil matters, except to say the magistrates will operate as they do now. This involves very little actual civil cases, trials, etc.

Most tribes contract with the BIA under §450 to operate the tribal courts. The tribes have the capability to handle civil matters over all persons; as the states handle matters within their boundaries.

LIMITED WAIVER OF IMMUNITY. Congress has required a waiver of immunity under §450 f (c) and insurance for programs operated by tribes. The problem is that the BIA is not enforcing this waiver/insurance and persons harmed by tribes/agents are left without a court or remedy. Enforcement of this law would provide persons with a remedy, as in the federal and state systems (Tort claims acts). Note that the Pres. Comm. on Res. Economies (1984) recommended a limited waiver to improve business methods on reservations. I am litigating the issue of limited waiver under §450 in federal court, No. CV 84-270-GF (D.Mt.). But the courts grind tediously and maybe Congress can provide a more uniform solution to the problem.

SUMMARY. The bill overlooks existing federal policy and tribal courts as ways to solve the law enforcement problems. As an alternative, adequate funding and contracting with Indian tribes is a start.

Sincerely,

Vance Gillette

Vance Gillette, Attorney*
Box 909
Browning, MT 59417
(*Licensed: Blackfeet Tribal Court, Montana Federal Court, State of North Dakota, U.S. Supreme Court)

CC: Senator Mark Andrews
Senator Quentin Burdick
Rep. Byron Dorgan
Senate Select Committee on Indian Affairs

COUNTY OF GLACIER
OFFICE OF
COUNTY ATTORNEY

14 EAST MAIN STREET
P.O. BOX 438
CUT BANK, MONTANA 59427

JAMES C. NELSON
COUNTY ATTORNEY

LARRY D. EPSTEIN
DEPUTY COUNTY ATTORNEY

PHONE 873-2278
(AREA CODE 406)

January 10, 1985

Senator John Melcher
Ranking Minority Member
United States Senate
Select Committee on Indian Affairs
Washington, D. C. 20510

In Re: Senate Bill 3092

Dear Senator Melcher:

I enjoyed being able to testify before the hearing on the above Bill in Great Falls on January 3rd, 1985. I also thank you for your letter of January 4th, 1985, enclosing a copy of the Bill and a section by section analysis thereof.

As I testified in Great Falls on January 3rd, I believe that the Bill and the establishment of a special magistrate system on reservations is an important first step in solving the morass of jurisdictional problems facing Indian and nonIndian communities.

In your opening remarks you referred to the solution to Indian problems as being piece-meal on a case by case basis through the courts. I couldn't agree with you more and I sincerely believe that such a "solution" to our Indian problems is, in fact, no solution at all.

While the task will be formidable, I urgently believe that the jurisdictional problems between Indians and nonIndians can only be realistically and finally solved when Congress adopts a comprehensive body of legislation which will define, by statute, the juridcitional authority of Indian tribes over nonIndians and of the state over Indians. NonIndian persons living on the reservation have no voice in tribal government, yet various court cases are extending tribal jurisdiction over nonIndians to an ever greater extent. Those court cases are premised on the concept of tribal "sovereignity" which Federal District Judge Russell Smith has referred to in one case as a court created "fiction".

Congress urgently needs to be involved in Indian and nonIndian relations and I firmly believe that those relationships can only improve when Congress statutorily defines the rules that each side is required to play by.

If I can be of any assistance to your committee in these matters I will be most happy to cooperate.

Respectfully,

JAMES C. NELSON

JCN:mjp

COUNTY OF GLACIER
OFFICE OF
COUNTY ATTORNEY

14 EAST MAIN STREET
P.O. BOX 438
CUT BANK, MONTANA 59427

JAMES C. NELSON
COUNTY ATTORNEY

LARRY D. EPSTEIN
DEPUTY COUNTY ATTORNEY

PHONE 873-2278
(AREA CODE 406)

February 21, 1985

Honorable John Melcher
United States Senator
Room 730 - Hart Building
Washington, D. C. 20510

Dear Senator Melcher:

I ran across the recent 9th Circuit Court of Appeals case of Sanders v. Robinson (1984) No. 84-3636, as reported in the January 1985 issue of the Indian Law Reporter (12 ILR 2018). I am enclosing a copy of the opinion for your information.

The case is unique, only in that the Court sets forth in a very concise opinion the state of the law with respect to Indian tribal civil jurisdiction over non-Indians on reservations--to-wit, that:

(1) neither the U.S. nor any state constitution has any force or effect on the reservation; and

(2) notwithstanding that a person's constitutional rights may have been violated, by the unlawful assertion of jurisdiction by the Tribe, there is no access to the federal courts (or to the state courts) to challenge such violation.

I believe that if you told the man in the street that there were places all over America where he could freely choose to travel, or live, or farm his land, or run his business, and where he had absolutely no federal or state constitutional rights, and where he did not even have access to the federal or state courts to challenge a violation of his rights, he would tell you that you were crazy. Yet, such places exist as near as the closest Indian reservation.

I have difficulty in justifying that from the birth of our country millions of men have fought and died in foreign and domestic wars to preserve not only to Americans, but to all free men, the same basic rights which our two highest federal courts have insidiously abrogated. It is equally hard to believe that the Congress continues to tolerate such a state of affairs. But that is, in fact, the "law of the land."

I sincerely and urgently hope that you will try to remedy this travesty.

Respectfully,

JAMES C. NELSON
Glacier County Attorney

JCN:vmd
Enc: 1

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SANDERS v. ROBINSON, et al.

No. 84-3636 (unpublished) (9th Cir., Oct. 25, 1984)

Summary

The Ninth Circuit affirms the Northern Cheyenne Tribal Court's jurisdiction over domestic relations proceedings between a tribal member and a non-Indian, both of whom reside within the reservation.

Full Text

Before ANDERSON, SKOPIL, BOOCHEVER, Circuit Judges

Memorandum*

Richard Sanders, a non-Indian, brought an action in federal district court challenging the jurisdiction of the Northern Cheyenne Tribal Court to adjudicate divorce proceedings initiated by his wife, a member of the tribe. [*See* 11 Indian L. Rep. 3010.] The district court granted summary judgment for defendants. We affirm.

A grant of summary judgment is reviewed *de novo*. *Lojek v. Thomas*, 716 F.2d 675, 677 (9th Cir. 1983). The reviewing court must determine whether there is any genuine issue of material fact and whether the substantive law was correctly applied. *Id.*

Sanders makes several claims based on the United States Constitution. Indian tribes are unconstrained by constitutional limits on federal or state authority. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56, 98 S. Ct. 1670, 1676, 56 L.Ed.2d 106 [5 Indian L. Rep. A-55] (1978). While tribal authority is limited by the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1341 (1982), the writ of habeas corpus is the only remedy for a violation of that Act. *Santa Clara Pueblo*, 436 U.S. at 70, 98 S. Ct. at 1683.

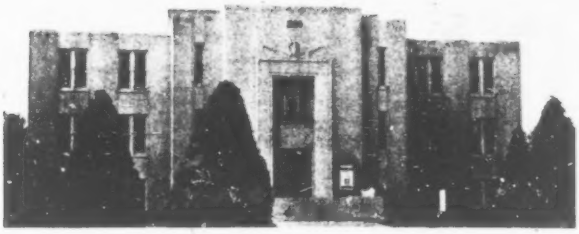
Sanders likewise has no basis for a federal common law cause of action challenging the tribal court's jurisdiction over divorce proceedings. An Indian tribe's assumption of adjudicatory jurisdiction, as opposed to regulatory jurisdiction, does not create a federal cause of action. *National Farmers Union Insurance v. Crow Tribe*, 736 F.2d 1320, 1323 [11 Indian L. Rep. 2133] (9th Cir. 1984), *petition for cert. pending*. An adjudication is "a formal, regular, and final judgment of the judicial tribunal to which the matter is submitted, acting upon the acknowledged principles of law applicable to the circumstances of the case." *United States v. Irwin*, 127 U.S. 125, 129, 8 S. Ct. 1033, 1035, 32 L.Ed. 99 (1888). A divorce proceeding is adjudicatory. *See generally* 27A C.J.S. *Divorce* § 7 (1959).

We conclude that there is no genuine issue of fact and the district court properly applied the substantive law.

Affirmed.

---

*The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21 of the Rules of this Court for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, not for publication in the *Federal Reporter*, and that this memorandum may not be cited to or by the courts of this circuit save as provided in Rule 21(c).



GLACIER COUNTY

CUT BANK, MONTANA

February 28, 1985

Honorable John Melcher
United States Senate
Senate Office Building
Washington, D. C. 20510

Dear Senator Melcher:

It appears as though in order to keep things equal on the reservation, we need to come up with some solution so the tribal members and the non-members can get along, not as powers, but as neighbors on equal terms. If we can come up with something to help this situation, the reservation will solve their own problems.

The non-members of the tribes living on the reservations have very nearly solved the problem as their families have married and there are more people on the reservation less than 1/2 blood and you have to be 1/4 blood before you are tax exempt. There will come a time when the Indians that are exempt from your tax structure are going to have to help support the county they live in. They are the only people in the U.S.A. that have this privilege. As Mansfield quoted "treaties are not meant forever". The Federal Government is so far in debt that everyone must help support and pay off our debt.

So, if we can just come up with some solution so the non-members can live in peace with the tribal members, we will have it made. The Federal Government is the conservator of the Indians, but he has to look to find a better tax-payer than the non-members of the Tribe on the Blackfeet Reservation. One-half of all the taxes come from the reservation in Glacier County ($4,500,000.00) and 80% is spent right back where it came from on schools, roads, ambulance service, solid waste, law and order, cemetaries, libraries and all are county responsibilities. The reservation is treated as part of the county. Land values are down all over and the banks and insurance companies are reluctant to invest their money on the reservation. If we can do something to reverse this situation, I am sure we can live in peace and also help the tribe to progress. Once the friction is controlled, non-members and tribal members will work together.

We have given the tribes everything we can such as homes, hospitals, doctors, dentists, no car taxes, no cigarette taxes and no taxes. They are the only people with all these privileges.

Let's look at the taxpayer with the people living on the reservation along side of the people that are exempt from the responsibility of citizenship and are citizens with no obligations.

Let's protect the taxpayer with the Magistrate Bill or with the Resolution that syas the tribes have jurisdiction just over members of the tribe and trust lands and non-members come under State Jurisdiction.

Sincerely,

Fred R. Johnson

Fred R. Johnson
Select Committee of Indian Affairs
for the State of Montana
Box 1269
Browning, Montana 59417

December 29, 1984
1035 2nd St
Havre, MT 59501

Hon. John Melcher,

Since I cannot attend the meeting on hearing of Indian Court bill, I would like to present my views in a letter.

I am deeply opposed to establishing any new position of Federal magistrates on Indian Reservations. The present administration is trying to cut out wasteful programs such as this. The Indian Reservations are doomed to fail and why burden the taxpayers of this great country with programs that are not working? (Indian Reservations.)

The termination of Indian Reservations is inevitable, so why even propose a new program such as this?

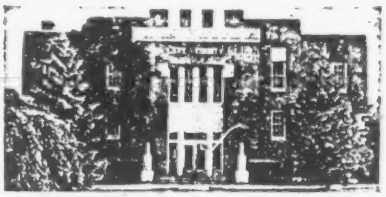
Respectfully yours,

s/_____

Gary Horning

LAKE COUNTY, MONTANA

COUNTY COMMISSIONERS
DON CORRIGAN
Polson
HAROLD FITZNER
St. Ignatius
MIKE W. HUTCHIN
Polson
TREASURER
MARJORIE D. KNAUS
CLERK AND RECORDER
ETHEL M. HARDING
ASSESSOR
WILL TIDDY



SHERIFF AND CORONER
GLENN FRAME
CLERK OF COURT
KATHERINE E. PEDERSEN
SUPERINTENDENT OF SCHOOLS
GLENNADENE FERRELL
COUNTY ATTORNEY
JOHN FREDERICK
JUSTICE OF THE PEACE
CHARLES C. MEYER
Ronan
COUNTY SURVEYOR

POLSON, MONTANA 59860

January 10, 1985

The Honorable John Melcher
U. S. Senator
253 Russell Senate Office Building
Washington, DC 20510

Dear Senator Melcher:

Thank you for your invitation to the hearing on proposed Senate Bill 3092. Due to major back surgery, I was unable to attend but would like to offer the following written comment for the record on behalf of Lake County.

In principal we are opposed to the idea that millions of dollars be spent to create another court to adjudicate some citizens of this country, particularly since those citizens already have courts guaranteed to them by the U. S. Constitution. Lake County and the Flathead Reservation have concurrent jurisdiction in regard to felonies which provides adequately for every citizen within Lake County and the Reservation. This bill would likely deteriorate an agreement made more than 20 years ago, which we feel would not be in the best interests of the County or the Tribe.

At first reading, the bill seemed like it might help the Counties and Reservations in areas that do not have concurrent jurisdiction and might support your efforts. However, after studying the bill several times, we have concluded that in no way could Lake County support your bill for all the following reasons:

To create magistrates on nearly all reservations

1. Increases the Federal deficit by several million dollars
2. Duplicates services already available to all citizens by the U. S. Constitution
3. Infringes upon non-Indian rights to have a vote on Tribal elected officials who operate their justice and criminal system, which by your bill could execute warrants for arrest, warrants for search and seizure, any summons, subpeona or order issued by the magistrate.
4. Does not provide for the right to sue the Tribe or BIA which might fail to properly do their job, which all county departments are subject to.

5. The magistrate is by Presidential appointment for eight years which we feel should be a locally elected position not to exceed a six year term.

6. Jurors are selected from state, county, municipal or Tribal elections. Non-Indians are being discriminated against for consideration to be jurors by the fact that they cannot vote in Tribal elections while Tribal members can vote in all elections. Thus increasing the chance for Indians to be selected for jurors by virtue of being on two lists of voters.

In closing, we feel it is paramount to note that when Tribal members were granted citizenship to this country they became subject to all laws and courts of this country as it exists, not with special privileges. Where in the world can you be a citizen of two countries?

With all respect, we wish to go on record as opposing Senate Bill S. 3092 for the above stated reasons and would request the bill to be discarded.

We feel a more appropriate bill could be initiated that would solve the problem with no increase in money and more simply stated as follows:

A bill that reuired ALL citizens (to include Indian Tribal members who are citizens to be subject to the courts that now exist whether for civil or criminal charges.

Sincerely,
BOARD OF LAKE COUNTY COMMISSIONERS

Mike W. Hutchin, Chairman

Harold Fitzner, Commissioner

Don Peterson, Commissioner

jd
cc: Senator Baucus
Rep. Williams
Rep. Marlenee

Oglala Sioux Tribe
Phone 605/867-5821
Box 468
Pine Ridge, South Dakota 57770

NEWTON CUMMINGS
President
JOHN STEELE
Vice President
EILEEN IRON CLOUD
Secretary
PENNY JANIS
Treasurer
PAUL IRON CLOUD
Fifth Member

Office of the President
NEWTON CUMMINGS

November 27, 1984

Senator John Melcher
United States Senate
253 Russell Senate Ofc. Bldg.
Washington, D.C. 20510

Re: Indian Reservation Special Magistrate and Law Enforcement Act of 1984

Dear Senator:

The Oglala Sioux Tribe is aware that you introduced a bill in the 98th Congress for the President to appoint special magistrates to exercise jurisdiction over federal offenses within Indian country.

Your bill would help the Oglala Sioux Tribe and the federal government in several deficient areas. We have cases that are turned down by federal prosecutors because of their nature or insufficient documentation. The Tribe has been working in updating tribal ordinances to duplicate the federal responsibility where it is not being carried out.

Your bill would solve our problem so we strongly support your reintroducing it in the 99th Congress.

We remain,

Sincerely,

Newton Cummings
President
Oglala Sioux Tribe

John Steele
Vice President
Oglala Sioux Tribe

Box 252
Hardin, MT
Jan. 14, 1985

Dear Senator Melcher:

Due to an ever increasing number of assaults, threats, and harassment against non-Indians and more particularly our County government officials, it is long past due that an effective system of law and order be instituted as soon as possible on the Crow Indian Reservation.

Your bill providing for a "Magistrate" would be of great benefit for the near future.

I do believe that, over the long term, the best solution would be for the State of Montana and Big Horn County to assume full legal authority governing all citizens in Montana including Indian and non-Indian--Reservation and off Reservation areas.

What is the justification to permit persons to elect State and County officials--then also permitting those same persons to disregard or otherwise not be subject to the jurisdiction of the State and County laws?

This dual "citizenship" enjoyed by the Indian people is creating a very serious civic problem in the Hardin--yes, all over Big Horn County.

People are very worried about the lack of protection and enforcement of the law.

You are well aware, Iam sure, of the resignation of our County Commissioner, after being assaulted without cause on the Reservation, and the lack of enforcement, also, the confiscation of the property of the School District 27 by the Crow Tribe.

Please address this problem immediately.

Sincerely,

s/_____

Brad Spear

December 31, 1984
P.O. Box 1291
Polson, Montana 59860

Senator John Melcher
253 Russell Building
Senate Office
Washington, D.C. 20510

Dear Senator Melcher:

Thank you for taking an interest in legal issues on Indian reservations. You are on proper course in your efforts to establish a magistrate to have a practical and fair method of resolving lawsuits on Indian reservations. The State of Montana has criminal jurisdiction on the Flathead Reservation which works fine, however, no fair method exists for resolving civil law suits from contracts and debts.

The opinions expressed here are my own and are not necessarily the opinion of my employer, The Security State Bank.

Under "Tab A" in the enclosed notebook is a Montana Supreme Court opinion on The Security State Bank vs Pierre. The opinion is concise and explains the problem very well. Certain parts have been high-lighted to emphasize points, however, the whole opinion is important. It would be appreciated if you would read it. In this case, The Security State Bank never collected the debt, and it returned an automobile that was repossessed collateral to Pierre.

"Tab B" is a letter to the bank from Sam Haddon, a Missoula attorney, expressing his opinion of the Pierre case referred to above. In this opinion he states that the bank is unable to collect any debt from a tribal member unless it is voluntarily paid. Further, he points out that the bank has no recourse in either federal or state court and recommends against using the tribal court system for some very good reasons. Please read this opinion for background.

"Tab C" is a newspaper article which elaborates further on the tribal court system. While we have no direct knowledge of the Blackfoot Tribal Court system, the news article indicated it does not function fairly for non-tribal members. Although we have no direct knowledge of the facts, this problem may have contributed to the failure of the Browning bank, leaving the community without bank services.

"Tab D" contains Regulation B from the Board of Governors of the Federal Reserve system and is titled "Equal Credit Opportunity". The relevant part of Regulation B states that no one will be denied credit, or discriminated against, on the basis of race, color, religion, national origin, sex, marital status or age. We happen to believe that credit should not be denied to tribal members, and we regularly make loans to tribal members. Our consumer compliance examinations conducted by the Federal Reserve Bank bear this out; however, complying with this regulation has cost the bank considerably in uncollected loans. We need an equal court system to go with the equal credit extension. Legally no one should be placed in the position of making loans and then have the notes unenforceable in a court of law. It is not equal protection under the constitution.

The preceding paragraphs deal primarily with the legal issues of civil jurisdiction on Indian reservations. It is time to explain how we operate in this business enviroment.

First, we do make loans to tribal members. Many of these people are responsible members of the community and productive citizens. They borrow to purchase homes and automobiles, to operate businesses, farms and ranches, and they repay their loans. The credit comes from the bank as well as trade credit from merchants; however, there are indications

that some tribal members find it more difficult to obtain credit than non-tribal members do. The responsible Indian is probably discriminated against because of the current legal problem. The tribal member who does not wish to pay, benefits.

We have had problems with some loans to tribal members. If the loan is small, we do use the tribal court system, although it has been recommended, for the reasons stated in "Tab B", that we do not. In addition, we have received some funds and have repossessed some collateral. We are uneasy, and we do not get the same treatment as we get in the Montana State court system.

A judgment in tribal court will allow you to collect principal, but no accrued interest after the judgment. A Montana court provides for interest until the debt is paid. A tribal court policy provides a two-year statute of limitations. Montana courts have an eight-year statute of limitations on written obligations. A tribal court does not let you execute against property of a tribal member and sell it for payment of a debt even though this property is not held in trust. The Montana legal system provides this remedy and places a lien on real property. The tribal court, as a practical matter, only lets us receive a per capita payment and then only if the tribal member does not have a delinquent tribal loan. In effect, a judgment in a tribal court may not produce any debt repayment and is much weaker than a state court judgment. It is little better than no judgment.

As I mentioned, we are uneasy in tribal court. The tribal judges do not have legal training to the standards of state or federal judges. We have no representation in selecting the judges, either direct or indirect, as in the state or federal court system. The tribal court has no appeal court system as there is in state or federal court. In case of an appeal the tribal judges, including the judge who heard the original case, form the appeal group. The tribal member being sued may often be a relative of one of the judges.

In addition, the bank, or any merchant creditor, puts themselves subject to any counter claim the tribal court may wish to make. Because of the counter claim problem, with no reasonable appeal process, we are reluctant to take a large suite to tribal court. Jean A. Turnage, a tribal member and the Chief Justice Elect of the Montana Supreme Court, has been our bank counsel and has advised us against taking large cases to tribal court. Because of this, we have charged off $216,855.56 with no practical way to collect. In this case, a husband, who is caucasian, and his wife, who is a tribal member, operate a farm and have banked with us since 1962. All dealings were handled in a business like manner until 1982 when these borrowers told us they did not intend to repay their debt. We sued the husband in state court and have received a judgment for this amount, plus interest and costs. We have avoided tribal court although the wife filed suit in federal court to make us go to tribal court. The federal court refused. We do not feel we can legally repossess any collateral in this situation. The wife, a tribal member, is 1/8th indian and a college graduate; however, a small amount of indian ancestry qualifies her as a tribal member. We have a debt we can not collect and they are continuing to live on and operate the farm.

This is not the only problem we have had, but it is the largest. We could cite other examples involving vehicles and smaller amounts. We also have other large loans to tribal members, similar to the above, who have been customers for a long time. It is not a comfortable feeling. As previously mentioned, the people referred to above were responsible customers for 20 years and used large sums of credit over much of that period until making a decision to default.

The banks on the reservation are not the only ones with this problem. I know of a fuel distributor who has $13,000.00 that he can not collect from a tribal member, who operated a farm and service station. I know of another person who rented a house to a tribal member and lost approximately six months rent without any recourse. Any merchant, or anyone who finances automobiles, such as G.M.A.C. or Ford Motor Credit, or who finances mobile homes, such as General Electric Credit or Green Tree Acceptance, or a savings and loan, or a bank will eventually have a civil law problem if sufficient number of credit extensions are made to tribal members. No one likes to discuss mistakes and credit losses publicly.

In closing, we appreciate the interest you are taking in the problem of legal jurisdiction on reservations. If you could establish a federal judge or magistrate to take jurisdiction over these cases, with rights to appeal through the federal court system, it would be very much appreciated both by those who extend credit and by the responsible indian who deserves credit and can not always get it on equal terms.

Sincerely,

Frank S. Stock

Frank S. Stock

FSS/jj
Enc.

[EDITORS NOTE: The aforementioned tabs are retained in the files of the committee.]

GLENN E. STONER

JUSTICE OF THE PEACE

Teec Nos Pos Precinct
P.O. Box 888
Chinle, Arizona 86503-0888

(602) 674-3290

January 11, 1985

Senator John Melcher
Senate Office Building
Washington, D.C. 20510

Dear Senator Melcher,

After reading some newspaper articles on your proposed legislation on federal magistrates on reservations, I decided to write to you and commend you on your efforts to confront a serious problems on Indian Reservations.

This problem or subject has been one of my concern for several years, and every chance I can get, I get on my soap box and express my personal feelings on it. I would certainly like to meet you personally and talk to you face to face on this subject. But Chinle, Arizona, is a long ways from Montana or Washington, D.C., so I would like to introduce myself by letter and give you a little background about myself.

I have lived on the Navajo Reservation for 26 years, doing various jobs and operating my own business. My present position is Justice of the Peace, Teec Nos Pos Precinct, Chinle, Arizona, which I have served as, since April 1977. My precinct is located entirely on the reservation, the only Justice Court in the State of Arizona, total of 86 in this unique situation. So you can see from my experience, I do have some first hand knowledge on the subject of court jurisdiction, Federal, State, and Tribal.

Someone once told me, that we may agree on some things and disagree on others, which is alright as long as we are not disagreeable. My point is I agree with you on the problem, that federal misdemeanors are not prosecuted But I disagree on your solution in appointing federal magistrates to solving this problem, I am not saying that this would not work, I think there is another way to solve this.

I am speaking strictly on federal criminal misdemeanors. My solution is if the defendant is Indian, he would go to Tribal Court. If the defendant is non-Indian he would go to State Justice Court. The Federal Court would still have jurisdiction over the more serious offense on felony cases. I feel this would be a workabe solution and agreeable with all concerned jurisdiction, Federal, State, and Tribal. The tribes would not loose anymore control. It would lighten the caseload for federal court and save the additional expense of new federal magistrates. The States would have to do their jobs. This solution would also require some type of federal legislation and cooperation between all courts.

Speaking of cooperation, you should observe this area in Chinle. There is a Navajo District Court, located here in Chinle, too. I feel we have an excellent relationship and mutual professional respect for our courts. This respect is county wide, including our Superior Court in Apache County.

Whatever the solution is, we definitely need one. I would like to commend you again, for your efforts on this problem. Have enclosed a copy of Arizona Revised Statues 13-3874 on Indian police for your information.

If I can be of any assistance or answer any specific question, please don't hesitate to call on me, because I am truly concern.

Sincerely,

Glenn E. Stoner

Glenn E. Stoner
Justice of the Peace

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§ 13-3874 CRIMINAL CODE Title 13

§ 13-3874. Indian police; powers; qualifications

A. While engaged in the conduct of his employment any Indian police officer appointed by the Bureau of Indian Affairs or the governing body of an Indian tribe as a law enforcement officer and holding a certificate of qualification and training from the director of the department of public safety shall possess and exercise all law enforcement powers of peace officers in this state.

B. Each agency appointing any Indian police officer pursuant to this section shall be liable for any and all acts of such officer acting within the scope of his employment or authority. Neither the state nor any political subdivision shall be liable for any acts or failure to act by any such Indian police officer.

Added as § 13-1261 by Laws 1972, Ch. 70, § 1, eff. April 25, 1972. Renumbered as § 13-3874 by Laws 1977, Ch. 142, § 129, eff. Oct. 1, 1978.

Library References

Indians ⇨49 C.J.S. Indians § 69 et seq.

OFFICE OF COUNTY ATTORNEY
VALLEY COUNTY
P.O. BOX 1187
GLASGOW, MONTANA 59230

DAVID L. NIELSEN
COUNTY ATTORNEY
(406) 228-2404

JOHN A. LANGEN
DEPUTY COUNTY ATTORNEY
(406) 228-9339

January 21, 1985

Senator John Melcher
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510

RE: Law Enforcement on Indian Reservations

Dear Senator Melcher:

Enclosed is a letter which I sent to Mr. Dunbar in reference to the concerns raised by non-indians who reside on, own land within, and farm within the boundaries of Fort Peck Indian Reservation. These individuals in a meeting attended by me expressed great concern over the lack of law enforcement and criminal law protection because they are non-indians living within an indian reservation. The Federal agents and prosecutors do a fine job on the cases that they handle but too many times there is simply not enough Federal manpower to handle all of the cases which arise on an indian reservation. Too many of the cases go uninvestigated and unprosecuted because of this shortage of manpower. I do not know what would be a good stop-gap remedy, but it is a problem which seems to get worse the longer it goes on. I would appreciate your attention and concern in this regard.

Sincerely yours,

David L. Nielsen

DLN:bg
cc: Mr. Pete Dunbar

OFFICE OF COUNTY ATTORNEY
VALLEY COUNTY
P.O. BOX 1187
GLASGOW, MONTANA 59230

DAVID L. NIELSEN
COUNTY ATTORNEY
(406) 228-2404

JOHN A. LANGEN
DEPUTY COUNTY ATTORNEY
(406) 228-9339

January 17, 1985

Mr. Pete Dunbar
United States Attorney
U.S. Department of Justice
District of Montana
P.O. Box 1478
Billings, Montana 59103

RE: Law Enforcement on Indian Reservations

Dear Pete:

On January 11, 1985, I was invited to attend a meeting at the Valley County Commissioners' office which was called at the request of several non-indians who reside on and farm deeded land located within the boundaries of the Fort Peck Indian Reservation. They expressed to me a great concern in that as non-indians they feel they do not have adequate law enforcement protection and particularly that law enforcement cannot respond for preventive type actions. Their comments were directed at the non-action of the Valley County Sheriff's Department for refusal to respond to calls on the Fort Peck Indian Reservation over which the Sheriff's office does not have jurisdiction. There was no criticism of your office or of the Federal agents but rather a general criticism of lack of law enforcement personnel who can respond to an incident immediately when called. I discussed with them at great length that the State did not have jurisdiction in any case within the boundaries of the Indian Reservation when there is either an indian as a victim or as a perpetrator. This explanation, though understood by them, did not reduce their fears and anticipations. The reason I am writing this letter is to make you aware of the problem even though I know there is probably no immediate practical solution. It is my suggestion and it is the advice that I am going to give the Sheriff of Valley County that when he receives a call he should respond and have an officer sent to investigate. If it is determined from the investigation that the State does not have jurisdiction then the case will be referred to one of the local Federal agents.

If you have any further suggestions or concerns over this advice please advise and I will be happy to discuss it with you further. I am going to send a copy of this letter to Montana's Congressional Delegation for their information, and hopefully, their use in the current bill proposed by Senator Melcher which would establish a Federal Magistrate upon each of the Indian Reservations. It seems that we have a gap in the enforcement of the law on the Indian Reservations which could be filled by the utilization of such a magistrate. Thank you for your interest in this matter.

Sincerely yours,

David L. Nielsen

County of Yellowstone

OFFICE OF THE SHERIFF
Mike Schafer, Sheriff

P.O. BOX 35017
BILLINGS, MONTANA 59107

January 31, 1985

Senator John Melcher
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510

Dear John:

I reviewed the bill you have introduced and I feel it is needed and it is a direction that law enforcement encourages you to continue with.

I am sure you are aware that there are many law enforcement problems on the reservations; however, the investigation is limited to federal agents in Montana. I believe that local law enforcement needs some power on the reservations and as you continue to plan and design these various bills, please feel free to contact me if you have any questions.

Sincerely,

MIKE SCHAFER, SHERIFF

Mike Schafer

YELLOWSTONE COUNTY

MS/lr